

United States
8
Circuit Court of Appeals

For the Ninth Circuit.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

R. J. NELSON, M. BURNS, JAS. ALLEN, R. W. KELLY, C. VANDERLEY, G. SWANSON, C. B. PETTERSON, K. H. NIEMI, PETER EMMERS, S. JOHANNSEN, ANDRIES VAN ROON, LENHART SAARNIA, L. R. DRAKE, F. JORGENSEN, A. A. KRUTMEYER, JOHN R. WHALEN, V. J. RISARDO, C. J. SULLIVAN, J. E. GOUGH, A. H. LAKE, P. S. MURRAY, E. J. FARRELL, R. SCHULZ, S. H. HINRICHI, D. L. HEYWOOD, JAMES MOORE and PATRICK O'MARA,
Appellees.

Apostles on Appeal.

Upon Appeal from the Southern Division of the
United States District Court for the
Northern District of California,
First Division.

FILED
JUN 14 1931
F. D. MONCKTON,
CLERK

United States

Circuit Court of Appeals

For the Ninth Circuit.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

R. J. NELSON, M. BURNS, JAS. ALLEN, R. W. KELLY, C. VANDERLEY, G. SWANSON, C. B. PETTERSON, K. H. NIEMI, PETER EMMERS, S. JOHANNSEN, ANDRIES VAN ROON, LENHART SAARNIA, L. R. DRAKE, F. JORGENSEN, A. A. KRUTMEYER, JOHN R. WHALEN, V. J. RISARDO, C. J. SULLIVAN, J. E. GOUGH, A. H. LAKE, P. S. MURRAY, E. J. FARRELL, R. SCHULZ, S. H. HINRICHI, D. L. HEYWOOD, JAMES MOORE and PATRICK O'MARA,
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the Southern Division of the United States District Court for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,871.

R. J. NELSON, M. BURNS, JAS. ALLEN, R. W. KELLY, C. VANDERLEY, G. SWANSON, C. B. PETTERSON, K. H. NIEMI, PETER EMMERS, S. JOHANNSEN, ANDRIES van ROON, LENHART SAARNIA, L. R. DRAKE, F. JORGENSEN, A. A. KRUTMEYER, JOHN R. WHALEN, V. J. RISARDO, C. J. SULLIVAN, J. E. GOUGH, A. H. LAKE, P. S. MURRAY, E. J. FARRELL, R. SCHULTZ, S. H. HENRICHI, D. L. HEYWOOD, JAMES MOORE and PATRICK O'MARA,

Libelants,

vs.

Steam Vessel "CITY OF OMAHA," Her Engines, Boilers, Tackle, Apparel, Furniture and Cargo, and the UNITED STATES OF AMERICA,

Respondent.

Praeceptum for Transcript on Appeal.

To the Clerk of the Southern Division of the United States District Court, in and for the Northern District of California:

You will please prepare a transcript of the record in the above-entitled cause to be filed in the office

of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit under the appeal and assignment of errors heretofore sued out and perfected to said court, and include in said transcript the following pleadings, proceedings, and papers on file, to wit:

1. Statement under Admiralty Rule 4.
2. All of the pleadings, with the exhibits and interrogatories and answers to the interrogatories annexed thereto.
3. All of the testimony and other proofs, including stipulations as to the facts, adduced in the cause.
4. The opinion of the Court. [1*]
5. The final decree.
6. The petition for appeal, order allowing appeal, and notice of appeal.
7. The assignment of errors.
8. The supersedeas.
9. The citation on appeal.
10. The clerk's minutes.
11. This praecipe.
12. Clerk's certificate to transcript.

Said transcript to be prepared as required by law and the rules of the United States Circuit Court of Appeals for the Ninth Circuit and filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, within thirty days after the filing of the notice of appeal in said cause.

*Page-number appearing at foot of page of original certified Apostles on Appeal.

Dated this 14th day of April, 1921.

FRANK M. SILVA,
United States Attorney,
FREDERICK MILVERTON,
Special Assistant United States Attorney in Ad-
miralty,

Proctors for Respondents.

Service of a copy of the foregoing praecipe for transcript of record in the above-entitled cause is hereby admitted this 14th day of April, 1921.

H. W. HUTTON,
Proctor for Libelants.

[Endorsed]: Filed Apr. 15, 1921. W. B. Maling,
Clerk. By C. M. Taylor, Deputy Clerk. [2]

In the Southern Division of the District Court of the
United States for the Northern District of Cali-
fornia, First Division.

No. 16,871.

R. J. NELSON et al.,

Libelants,

vs.

The Steam Vessel "CITY OF OMAHA," Her
Engines, Boilers, etc., and Cargo, and THE
UNITED STATES OF AMERICA,
Respondents,

Statement of Clerk U. S. District Court.

PARTIES.

Libelants: R. J. Nelson, M. Burns, Jas. Allen, R. W. Kelly, C. Vanderley, G. Swanson, C. B. Pettersson, K. H. Niemi, Peter Emmers, S. Johannsen, Andries, van Roon, Lenhart Saarnia, L. R. Drake, F. Jorgensen, A. A. Krutmeyer, John R. Whalen, V. J. Risardo, C. J. Sullivan, J. E. Gough, A. H. Lake, P. S. Murray, E. J. Farrell, R. Schultz, S. H. Hinrichi, D. L. Heywood, James Moore and Patrick O'Mara.

Respondents: The Steam Vessel "City of Omaha," Her Engines, Boilers, Tackle, Apparel and Furniture, and Her Cargo, and The United States of America. [3]

PROCTORS.

For Libelants: H. W. HUTTON, Esq.

For Respondents: FRANK M. SILVA, Esq., United States Attorney, and E. M. LEONARD, Esq., Assistant United States Attorney, San Francisco, Calif.

PROCEEDINGS.

1920.

June 18. Filed libel for salvage, with interrogatories attached.

Issued monition for the attachment of the "City of Omaha," which was returned with the following endorsement thereon: "Returned

not executed by order libelant's attorney.

J. B. HOLOHAN,
United States Marshal.

By G. C. White,
Deputy.

San Francisco, Cal., June 22, 1920."

22. Filed amended libel and interrogatories.
- July 6. Proclamation duly made.
- August 14. Filed answer to libel and answers to interrogatories.
- November 5. This cause came on this day for hearing, before the Honorable MAURICE T. DOOLING, Judge, and was ordered submitted.
Filed deposition of A. C. Norris, taken on behalf of respondents.
- 1921.
- February 18. Filed opinion, in which it was ordered that a decree be entered in favor of libelants, to the extent that each libelant recover a sum equal to two months' pay. [4]
- 1921.
- March 1. Filed final decree.
2. Filed proposed modifications of decree.
3. It was this day ordered that the motion of the proctor for respondent to strike out certain lines of the decree be granted.

22. Filed stipulation in regard to certain facts pertaining to the order modifying decree.
- April 15. Filed notice of appeal.
 Filed petition for appeal.
 Filed assignment of errors.
 Filed citation on appeal.
 Filed supersedeas.
18. Filed stipulation and order that the original exhibits be transmitted to the United States Circuit Court of Appeals. [5]
-

In the Southern Division of the District Court of the United States in and for the Northern District of California, First Division.

IN ADMIRALTY—(No. 16,871).

R. J. NELSON, M. BURNS, JAS. ALLEN, R. W. KELLY, C. VANDERLEY, GUST SWANSON, C. B. PETTERSON, K. H. NIEMI, PETER EMMERS, S. JOHANSEN, ANDRIES van ROON, LENNART SAARNIA and L. R. DRAKE and F. JORGENSEN,
 Libelants,

vs.

Steam Vessel "CITY OF OMAHA," Her Engines and Boilers, Tackel, Apparel and Furniture and Cargo,

Respondents.

(**Libel.**)

To the Honorable M. T. DOOLING, Judge of the
Above-entitled Court:

The libel of the libelants above named against the steam vessel "City of Omaha," her engines and boilers, tackle, apparel, and furniture, and her cargo, and against all persons lawfully intervening for their interest therein in a case of salvage, civil and maritime, alleges as follows:

I.

That on all the dates and times herein mentioned the steamship "City of Omaha" was and now is an American vessel, and at the time of the filing of this libel she is lying in the port of San Francisco with her cargo hereinafter mentioned on board thereof, within the district of the above-named Honorable Court.

II.

That on all of the dates and times herein mentioned the steamship "Cockaponset," was and now is an American vessel, and on all of said dates and times libelants, who are all residents of the Northern District of California, were employed on her in the following capacity, and at the following rates of wages: [6]

Libelant M. Burns, as First Mate, at the wages of
\$228.25 per month.

Libelant James Allen as Second Mate, at the wages
of \$200.00 per month.

Libelant R. W. Kelly as Third Mate, at the wages
of \$176.25 per month.

Libelant C. Vanderley as Carpenter, at the wages of \$105.00 per month.

Libelant Gust Swanson as Boarswain, at the wages of \$95.00 per month.

And libelants R. J. Nelson, C. B. Petterson, K. H. Niemi, Peter Emmers, S. Johansson, Andries van Roon, Lennart Saarnia, and F. Jorgenson as Able Seamen, at the wages of Ninety (\$90.00) Dollars per month, and libelant L. R. Drake as Ordinary Seamen, at the wages of \$65.00 per month.

III.

That heretofore and on the 28th day of May, 1920, while said vessel was on the high seas bound to said San Francisco, and about 170 miles or more to the south of Cape St. Lucas, which is the extreme southern end of Lower California, and while libelants were on board in the capacities and at the rates of wages aforesaid, said vessel took in tow the said steam vessel "City of Omaha," which was then lying helpless by reason of her boilers being entirely incapable of use, and towed said vessel with a cargo she then had on board from said place where she was so taken in tow to San Pedro, in California, and then delivered her and her said cargo safely, such delivery taking place on the 5th day of June, 1920, the distance covered by said towing being approximately 900 miles, each of libelants assisting in the capacities aforesaid in said work.

IV.

That the said vessel "Cockaponset" was called by wireless message to the assistance of said "City

of Omaha” and her cargo, and at the time she was taken in tow as aforesaid she had been lying helpless for about three days, having no means of propulsion or generating [7] lights on board, and was in almost total darkness at night-time, and she had also theretofore suffered some damage to her hull, the nature and extent of which libelants do not know; that said vessel had theretofore put into Salina Cruz, Nicaragua, for repairs, which repairs were ineffectual, and after leaving there and proceeding to where she was picked up by the “Cockaponset” as aforesaid, she became totally disabled, helpless and with her cargo in danger of total loss, she being subject to currents which would likely have carried her on shore, and also subject to any storm that might have arisen; that said towing was accomplished with a hawser made up of a steel rope attached to an anchor chain, the total length of which was about eighty fathoms, which said hawser broke once in towing.

V.

That on their information libelants allege that the value of the said “City of Omaha” as delivered at said San Pedro was the sum of about \$1,750,000 and the value of her said cargo so delivered was the sum of about \$2,000,000.00 *dollars* the said cargo at all of the times aforesaid being in equal danger of loss with said vessel.

VI.

That both of said vessels were merchant vessels of the United States of America on all of said dates and times.

VII.

That by reason of the premises, libelants each pray this Honorable Court to make a salvage award to each of libelants for their services aforesaid to said "City of Omaha" and her said cargo, which shall be just and reasonable.

VIII.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.
[8]

WHEREFORE, libelants pray that process in due form of law according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against the said steam vessel "City of Omaha," her engines and boilers, tackle, apparel and furniture, and cargo, and that all persons claiming any right or interest therein may be cited to appear and answer under oath all and singular the premises aforesaid and the interrogatories hereto attached, and that this Honorable Court will be pleased to make a reasonable salvage award to be paid by said vessel and her cargo to each of the libelants, and that said vessel and her said engines and boilers and her said cargo may be condemned and sold to pay the same with costs, and that libelant may have such other and further relief as the Court is competent to give in the premises.

R. J. NELSON,

Libelant.

All of the Other Libelants in the Caption Thereof
Named,

By H. W. HUTTON,
Their Proctor Thereto Authorized.
H. W. HUTTON,
Proctor for Libelants.

United States of America,
Northern District of California,—ss.

R. J. Nelson, being first duly sworn, deposes and
says as follows:

I am one of the libelants above named and herein;
I have read the foregoing libel and I know the con-
tents thereof, and the same is true of my own knowl-
edge except as to the matters therein stated on in-
formation or belief, and as to those matters I be-
lieve it to be true.

R. J. NELSON.

Sworn to before me this 17th day of June, 1920.

[Seal]

C. W. CALBREATH,

Deputy Clerk U. S. District Court, Northern Dis-
trict of California. [9]

**Interrogatories Attached to Libel Which are
Required to be Answered Under Oath.**

1. When was the steam vessel "City of Omaha"
launched?
2. What did it cost to build her?
3. What was the value of her cargo when she left
her port of first departure with said cargo
on board?
3. On what voyage was she bound when picked
up by the "Cockponset"?

4. Had the "City of Omaha" stopped at any port on such voyage for repairs on such voyage; if so, what repairs and where?
5. Had the "City of Omaha" suffered any damage to her hull on said voyage; if so, what damage and where was it suffered?
6. How long had the "City of Omaha" *lied* helpless at the time she was picked up by the "*Cockponset*"?
7. In what latitude and longitude did she become helpless?
8. In what latitude and longitude was she picked up?
9. How close to the shore was she when picked up by the "*Cockponset*"?
10. What was the value of the "City of Omaha" when towed in to San Pedro by the *Cockponset*?
11. What was the value of the cargo of the "City of Omaha" when she was towed into San Pedro by the "*Cockponset*"?
12. What trouble existed on board of the "City of Omaha" that caused her to become helpless?
13. When did such trouble first commence?
14. In what latitude and longitude was the "City of Omaha" when such trouble first commenced?

H. W. HUTTON,
Proctor for Libelants.

[Endorsed]: Filed Jun. 18, 1920. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

In the Southern Division of the District Court of the United States in and for the Northern District of California, First Division.

IN ADMIRALTY—(No. 16,871).

R. J. NELSON, M. BURNS, JAS. ALLEN, R. W. KELLY, C. VANDERLEY, G. SWANSON, C. B. PETTERSON, K. H. NIEMI, PETER EMMERS, S. JOHANNSEN, ANDRIES van ROON, LENHART SAARNIA, L. R. DRAKE, F. JORGENSEN, A. A. KRUTMEYER, JOHN R. WHALEN, V. J. RISARDO, C. J. SULLIVAN, J. E. GOUGH, A. H. LAKE, P. S. MURRAY, E. J. FARRELL, R. SCHULTZ, S. H. HINRICHI, D. L. HEYWOOD, JAMES MOORE and PATRICK O'MARA,

Libelants,

vs.

Steam Vessel "CITY OF OMAHA," Her Engines and Boilers, Tackle, Apparel and Furniture and Cargo, and the UNITED STATES OF AMERICA,

Respondents.

Amended Libel.

To the Honorable M. T. DOOLING, Judge of the Above-entitled Court:

The amended libel of the libelants above named, filed as of course, against the steam vessel "City of Omaha," her engines and boilers, tackle, apparel and furniture and cargo, and against all persons

lawfully intervening for their interest therein, and against the United States of America, a nation, in a cause of salvage, civil and maritime, alleges as follows:

I.

That at all of the dates and times herein mentioned the steam vessel "City of Omaha" and the steam vessel "Cockaponsett" were and now are merchant vessels of the United States of America, owned and operated by either United States Shipping Board, or United States Shipping Board Emergency Fleet Corporation, both of which are corporations organized and existing as capital stock corporations under and by virtue of the acts of the Congress of the United States, and on all of said dates and times the United States of America owned and now owns all of the capital stock of each of said corporations. [11]

II.

That at the time of the filing of the original libel herein the said "City of Omaha," with the cargo hereinafter mentioned on board, was and now is lying in the port of San Francisco, State of California, and on all of said dates and times the said cargo was and now is in the possession of the operator of said vessel aforesaid.

III.

That on all of said dates and times libelants were employed on board of said steam vessel "Cockaponsett" in the following capacities and at the following rates of wages, to wit:

Libelant M. Burns as First Mate, at the wages of \$228.25 per month.

Libelant James Allen as Second Mate, at the wages of \$200.00 per month.

Libelant R. W. Kelly as Third Mate, at the wages of \$176.25 per month.

Libelant C. Vanderley as Carpenter, at wages of \$105.00 per month.

Libelant G. Swanson as Boatswain, at the wages of \$95.00 per month.

Libelants R. J. Nelson, C. B. Petterson, K. H. Niemi, Peter Emmers, S. Johanssen, Andries van Roon, Lennart Saarnia and F. Jorgensen as able seamen at the wages of Ninety (\$90.00) Dollars per month.

Libelant L. R. Drake as ordinary seaman, at the wages of \$65.00 per month.

Libelant A. A. Krutmeyer as Deck Engineer, at the wages of \$105.00 per month.

Libelants John R. Whalen, V. J. Ricardo and C. J. Sullivan as Water Tenders, at the wages of \$90.00 per month.

Libelants J. E. Gough, A. H. Lake and P. S. Murray as Oilers, at the wages of \$90.00 per month.

Libelants E. J. Farrell, R. Schultz and Patrick O'Mara as Firemen, at the wages of \$90.00 per month, and

Libelants S. H. Hinrichs, D. L. Heywood and James Moore as Wipers, at the wages of \$90.00 per month.

IV.

That on the 28th day of May, 1920, the said steam vessel "City of [12] Omaha" was lying in a damaged condition and helpless about 120 miles

southerly from Cape St. Lucas, Lower California, the extent of such damage to said vessel being unknown to libelants excepting that she had a hole in her bow and her boilers were incapable of generating steam, and she had no means of propulsion or lighting said vessel, her said cargo then being on board as aforesaid, and she had so lied for the period of about three days in danger of total loss, when she signalled the said "Cockaponsett" for assistance by wireless telegraphy, and in due course the said "Cockaponsett" proceeded to the assistance of said "City of Omaha" and her cargo and with the assistance of libelants, who were each on board of said "Cockaponsett" in the capacities and at the rates of wages aforesaid, took the said "City of Omaha" in tow and towed her to a place of safety, to wit, the harbor of San Pedro, in the State of California, where she was safely delivered with her said cargo by said "Cockaponsett" with libelants' assistance, on the 5th day of June, 1920, having been so towed for a distance of about 900 miles.

V.

That the said towing was accomplished by means of a hawser between said vessels made up of a wire rope and anchor chain about 80 fathoms in length, which said hawser broke once in the performance of said work; that the danger to said "City of Omaha" and her said cargo consisted in her lying helpless subject to currents and storms, and she was in an unfrequented part of the ocean.

VI.

On their information and belief libelants allege

the value of the said "City of Omaha" to be about \$1,750,000.00 and her cargo to be about \$2,000,000.00 *dollars*.

VII.

That said "City of Omaha" was bound from Norfolk in the State of Virginia to Yokohama, Japan, with said cargo, and had prior to her being so taken in tow as aforesaid called at Salina Cruz, Nicaragua, [13] for repairs, which said repairs were ineffectual.

VIII.

That by reason of the premises, libelants each pray this Honorable Court to make a salvage award to each of the libelants for their services to said "City of Omaha" and her said cargo, which shall be just and reasonable.

IX.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, libelants pray that process in due form of law according to the law in such case made and provided may be served herein, and that this Honorable Court will be pleased to decree the payment to each of the libelants a salvage award herein against each of the respondents herein, with costs and interests as may be just and reasonable, and that the same may be paid as by law provided, and that libelants and each thereof may have such other and further relief as the Court is competent

to give in the premises.

R. J. NELSON,
A Libelant.

All Other Libelants in the Caption Thereof Named.

By H. W. HUTTON,

Their Proctor Thereto Authorized.

H. W. HUTTON,

Proctor for Libelants.

United States of America,
Northern District of California,—ss.

R. J. Nelson, being first duly sworn, deposes and says as follows:

I am one of the libelants above named and herein; I have read the foregoing libel and I know the contents thereof, and the same is true of my own knowledge except as to the matters therein stated on information or belief and as to those matters I believe it to be true.

R. J. NELSON. [14]

Subscribed and sworn to before me this 22 June, 1920.

[Seal] C. W. CALBREATH,
Deputy Clerk U. S. District Court, Northern District of California. [15]

Interrogatories Attached to Amended Libel to Which Answer is Required.

1. When was the steam vessel "City of Omaha" launched?
2. What did it cost to build her?
3. What was the value of her cargo when she left her port of first departure with said cargo on board?

4. On what voyage was she bound when picked up by the "Cockaponsett"?
5. Has the "City of Omaha" stopped at any port on such voyage for repairs; if so what repairs?
6. Had the "City of Omaha" suffered any damage to her hull on said voyage? And where was it suffered?
7. How long had the "City of Omaha" *lied* helpless at the time she was taken in tow by the "Cockaponsett"?
8. In what latitude and longitude did she become helpless?
9. How close to the shore was she when taken in tow by the "Cockaponsett"?
10. What was the value of the "City of Omaha" when towed into San Pedro by the "Cockaponsett"?
11. What was the value of the cargo of the "City of Omaha" when that vessel was towed into San Pedro by the "Cockaponsett"?
13. In what latitude and longitude was the "City of Omaha" taken in tow by the "Cockaponsett"?
13. What defects existed on the "City of Omaha" that caused her to become helpless?
14. When and where was the vessel when such defects first exhibited themselves? And in what latitude and longitude was she at that time?

H. W. HUTTON,
Proctor for Libelants.

[Endorsed]: Filed June 22, 1920. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [16]

In the Southern Division of the District Court of
the United States for the Northern District of
California, First Division.

IN ADMIRALTY.

R. J. NELSON, M. BURNS, JAS. ALLEN, R. W.
KELLY, C. VANDERLEY, G. SWANSON,
C. B. PETTERSON, K. H. NIEMI, PETER
EMMERS, S. JOHANNSEN, ANDRIES
van ROON, LENHART SAARNIA, L. R.
DRAKE, F. JORGENSEN, A. A. KRUT-
MEYER, JOHN R. WHALEN, V. J. RI-
SARDO, C. J. SULLIVAN, J. E. GOUGH,
A. H. LAKE, P. S. MURRAY, E. J. FAR-
RELL, R. SCHULTZ, S. H. HINRICHI,
D. L. HEYWOOD, JAMES MOORE and
PATRICK O'MARA,

Libelants,

vs.

Steam Vessel "CITY OF OMAHA," Her Engines
and Boilers, Tackle, Apparel and Furniture
and Cargo, and THE UNITED STATES
OF AMERICA,

Respondents.

Answer to Libel.

To the Honorable M. T. DOOLING, Judge of the United States Court in and for the Southern Division of the Northern District of California, First Division, in Admiralty.

The United States of America, owner of the steam vessel "City of Omaha," represented herein by Frank M. Silva, United States Attorney for the Northern District of California, comes now by and through E. M. Leonard, Assistant United States Attorney, and answering the libel in the above-entitled matter denies, admits, and alleges as follows:

I.

Answering unto the allegations of article I of the said libel, denies that at all or any of the times mentioned in [17] said libel the steam vessel "City of Omaha" and/or the steam vessel "Cockaponsett" were or are operated by either the United States Shipping Board or the United States Shipping Board Emergency Fleet Corporation, and alleges that the said steam vessel "City of Omaha" during all of said times was operated by Struthers and Dixon, a corporation, as agent, and alleges that the steam vessel "Cockaponsett" was, during all of said times, operated by Williams, Diamond & Co., a corporation, as agents.

II.

Answering unto the allegations of article IV of said libel, denies that on the 28th day of May, 1920, or at any other time, said steam vessel "City of

Omaha" was lying helpless with a hole in her bow and/or had no means of lighting said vessel, and/or was 120 miles southerly from Cape St. Lucas, Lower California, and/or that she had laid entirely helpless for any period of time, and denies that she was in danger of total or any loss or that she was in any danger by reason of damage to her hull. Alleges that said steam vessel "City of Omaha" was, by reason of boiler trouble, unable to make any headway for a period of about 24 hours before she was taken in tow by the said steam vessel "Cockaponsett"; that she was so taken in tow about the hour of twelve noon, on the 29th day of May; that during all of said 24 hours her master was and had been for some time in communication by wireless telegraph with the operators of said vessel at San Francisco, California; that arrangements has been made through said operators that either the steam vessel "Cockaponsett" or the steam vessel "Diablo," whichever should find it most convenient, should take said "City of Omaha" in tow and tow her to a place of safety; that during said 24 hours said steam vessel "City of Omaha" lay in the direct paths of all coastwise [18] vessels about 18 miles off the coast of California; that during said 24 hours the master of the steam vessel "Melville Dollar" and the master of the steam vessel "Diablo" each spoke with the master of the steam vessel "City of Omaha," and offered to take her in tow; that the steam vessel "Cockaponsett" was not taken out of her course by reason of towing said "City of Omaha"; that no extraordinary services were per-

formed by any of the members of the crew of the said "Cockaponsett"; and that the hawser and cable employed in said towing was part of the equipment of the steam vessel "City of Omaha."

III.

Answering unto the allegations of article V of said libel, denies that the said "City of Omaha" and her cargo were or was either at any time in any immediate danger by reason of lying helpless or otherwise or subject to currents and/or storms, and denies that she was at any of said times in an unfrequented part of the ocean, and alleges that she was in a part of the ocean unfrequented by storms or dangerous currents at the season of the year when she was there; that during all of the time that she was allowed to drift she drifted directly in the path of coastwise vessels; that during said times she was spoken by two steam vessels other than the "Cockaponsett," each of whose masters offered to tow her, and that at all of said times her exact location and condition was known to her said operators.

IV.

Answering unto the allegations of article VI of said libel, denies that the value of the cargo of the said steam vessel "City of Omaha" is 2,000,000 and alleges that said cargo was of the value of approximately \$606,475.00. [19]

V.

Answering unto the allegation of article IX of said libel, admit that all the premises are within the admiralty jurisdiction of the United States, but deny that the allegations of said complaint are true.

ANSWER TO INTERROGATORIES.

Answer to Interrogatory 1: The steam vessel "City of Omaha" was launched on or about the 15th day of November, 1919.

Answer to Interrogatory 2: The cost of building the steam vessel "City of Omaha" was approximately \$2,000,000.

Answer to Interrogatory 3: The value of the cargo when the steam vessel "City of Omaha" left her first port of departure was approximately \$606,475.00.

Answer to Interrogatory 4: The "City of Omaha" was bound on a voyage from Baltimore to Japanese parts via Panama Canal when picked up by the "Cockaponsett."

Answer to Interrogatory 5: The "City of Omaha" had stopped at Balboa on the voyage above referred to, to have repairs made to her stern, and plates which were buckled below the seventeen foot mark; also to have repairs made on electrical telemotor and brick work under boilers; she also stopped at Salina Cruz to repair brick work under her boilers and to repair boiler tubes.

Answer to Interrogatory 6: The "City of Omaha" did suffer damage to her hull in the Panama Canal.

Answer to Interrogatory 7: The "City of Omaha," by reason of needed repairs to her boilers, was unable to make any headway from 3:17 A. M. May 28, 1920, until the "Cockaponsett" arrived

Answer to Interrogatory 8: At the time that the alongside about noon the following day.

“City of Omaha” was prevented from making headway by reason of boiler trouble, she was approximately in latitude 20.50 north and longitude 107.50 west. [20]

Answer to Interrogatory 9: When taken in tow by the “Cockaponsett” the “City of Omaha” was approximately 180 miles offshore.

Answer to Interrogatory 10: The value of the “City of Omaha,” when towed into San Pedro by the “Cockaponsett” was approximately \$1,920,000.

Answer to Interrogatory 11: The value of the cargo of the “City of Omaha” when she was towed into San Pedro by the “Cockaponsett” was approximately \$606,475.00.

Answer to Interrogatory 12: At the time that the “City of Omaha” was taken in tow by the “Cockaponsett” she was approximately in latitude 21.14 north and longitude 107.58 west.

Answer to Interrogatory 13: The defects existing on the “City of Omaha” that *cause* her to seek a tow was boiler trouble.

Answer to Interrogatory 14: The “City of Omaha” had boiler trouble at intervals from the time that she met with accident in the Panama Canal.

WHEREFORE defendant prays that the libelants take nothing by the above-entitled cause, that said libel be dismissed and that defendant recover his costs and charges herein incurred, with such other relief as may be just.

Dated this — day of August, 1920.

FRANK M. SILVA,

United States Attorney.

E. M. LEONARD,

Asst. United States Attorney.

[Endorsed]: Filed Aug. 14, 1920. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [21]

At a stated term of the District Court of the United States, for the Northern District of California, First Division, held at the courtroom thereof, in the city and county of San Francisco, State of California, on Friday, the fifth day of November, in the year of our Lord one thousand nine hundred and twenty—Present: The Honorable MAURICE T. DOOLING, Judge.

No. 16,871.

R. J. NELSON et al.

vs.

Ves. "CITY OF OMAHA," etc.

Minutes of Court—November 5, 1920—Trial.

This cause came on regularly this day for hearing of the issues joined herein. H. W. Hutton, Esq., was present as proctor for libelant. E. M. Leonard, Esq., Asst. U. S. Atty., was present as proctor for respondent and claimant. Mr. Hutton called A. M. Birchisle and T. P. Deering, each of whom was duly sworn and examined on behalf of libelants, and introduced in evidence copy of log, which was filed

and marked Libelants' Exhibit No. 1, and rested. Mr. Leonard introduced in evidence the deposition of A. C. Norris, and also introduced in evidence as an exhibit certain copies of telegrams, which were filed and marked Respondent's Exhibit "A," and rested. After hearing the respective proctors, the Court ordered that this cause be submitted on briefs to be filed in 10, 10 and 5 days. [22]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

IN ADMIRALTY.

Before Hon. M. T. DOOLING, Judge.

R. J. NELSON et al.,

Libelants,

vs.

Steam Vessel "CITY OF OMAHA," Her Engines, Boilers, Tackle, Apparel and Furniture, and Cargo, and UNITED STATES OF AMERICA,

Respondents.

(Transcript of Testimony Taken in Open Court.)

Friday November 5, 1920.

COUNSEL APPEARING:

For the Libelants: H. W. HUTTON, Esq.

For the Respondent: E. M. LEONARD, Esq., Assistant United States Attorney.

Mr. HUTTON.—If your Honor please, this is a

case brought by twenty-seven of the crew of the steamer "Cockaponsett" to obtain an order fixing the total amount of the salvage award and the proportion thereof that the officers and crew were entitled to. There are practically no disputed facts. Briefly, I will state them as follows: The "City of Omaha" was a new vessel; she left the east coast bound for Japan with a cargo on board, and passed through the Panama Canal, and in passing through, by reason of her steering gear not working properly, she ran into one of the abutments there and knocked a hole in [23] her forefoot, which was temporarily patched; that the course properly should have been through the Panama Canal straight to Yokohama, but they had experienced boiler trouble prior to the time that she passed through the canal, and which increased after she had passed through it, and the master thought it advisable to proceed up the coast, which he did, and got as far as Salina Cruz, Mexico, where it was found necessary to put in for repairs. They spent quite a number of days there repairing the boilers, and then started out again, and after they left the boiler trouble got worse, she ran sometimes and sometimes did not run, until finally she got about 125 miles from Cape Saint Lucas, and then she stopped altogether; she laid there about twenty-four hours, or somewhere in that neighborhood; the vessel was lighted with electric lights, and when the boilers gave out the vessel was in darkness; she steered also by steam, and when the boilers gave out there was no means of steering her, except by hand. The "Cockaponsett" was

bound to San Francisco from the Canal, I think, but that is immaterial, anyway, and received a wireless message advising her of the position and condition of the "City of Omaha," and she went to her assistance and took her in tow, and finally towed her up to San Pedro, and safely delivered her there. She towed her something over 950 miles, occupying approximately 5 days, maybe a little longer. I know they had considerable difficulty in towing, by reason of the fact that they could not steer this vessel except by hand, except one day they managed to get the boilers working again, and then the boilers gave out again, and when they steered her by hand the man who steered was located in the after part of the vessel, and he could not see the towing vessel, and she yawed and went from side to side considerably, and broke one [24] towline, but they did finally safely deliver her.

Now, there are, as I have said, your Honor, very few disputed facts in the matter. The interrogatories attached to the answer, as to the value of the "City of Omaha" at the time of her building, shows she cost \$2,000,000, and she was a new vessel, but we are not standing exactly on that, her value as given; her cargo was of the value of \$606,475. The value of the "Cockaponsett" is also given, I do not know as that is very material. The interrogatories attached to the answer also give the location of the vessel at latitude 20.50 north, and longitude 107.50 west, at the time she gave out. At the time she was taken in tow her longitude was 21.14 north and longitude 107.58 west.

I desire, if your Honor please, to show what the probable weather conditions were, as I will in a few minutes by an experienced navigator, how far that was from the port of San Blas, and how far it was from the port of Manzanillo, and I will also offer in evidence, if your Honor please, a copy of the log of the "City of Omaha" from March 23d to June 5—June 5 is the date she was delivered in San Pedro. She was picked up on May 27th.

Mr. LEONARD.—That will be admitted, Mr. Hutton, though we might state that is the private memorandum of the master.

Mr. HUTTON.—No, that is the other vessel.

Mr. LEONARD.—I beg your pardon.

Mr. HUTTON.—I will ask to have that marked Libellant's Exhibit 1. I also desire to read in evidence, if your Honor please, from page 192 of a book which is published by the Hydrographic Office, in Washington. It is entitled "H. O. No. 84, Mexico and Central America Pilot, West Coast from [25] The United States to Colombia including the Gulfs of California and Panama, Sixth Edition," Published in the year 1920. On page 190 is a heading "Port San Blas," and on page 192, if your Honor please, under the heading of "San Blas" appears the following: "Seasons, winds.— The southerly winds begin in June and end in November; they are accompanied by much rain, do not blow steadily, are interrupted by frequent squalls from different points of the horizon, and generally wind up with a dangerous and violent storm. As this storm, which is always from between southeastward and southwest-

ward, most commonly happens about the time of the festival of St. Francis, the 5th of October, it has received the local name 'Cordonazo de San Francisco'; but it is sometimes considerably later, and then does the more damage from coming when the danger is no longer apprehended.

"During the dry season the weather is constantly fine. The winds prevail regularly during the day from northwest to west, following the direction of the coast, and are succeeded at night by a light breeze from the land or a calm."

Testimony of A. M. Birchisle, for Libelant.

A. M. BIRCHISLE, called for the libelant, sworn.

Mr. HUTTON.—Q. Where do you reside?

A. I reside in San Francisco.

Q. What is your occupation?

A. I am an officer in the Merchants Marine.

Q. How long have you been such?

A. I have been since 1918.

Q. Have you ever studied navigation?

A. Yes, I passed as a second mate in 1918, in the month of May.

Q. Have you in the last week worked out the distance of a vessel from the port of San Blas and the port of Manzanillo that was [26] lying in the latitude 21.14 north and longitude 107.58 west?

A. Yes, I have.

Q. How far would a vessel in that latitude and that longitude be from San Blas?

A. The distance will be from San Blas to the ship 151.65 miles.

(Testimony of A. M. Birchisle.)

Q. How far would she be from Manzanillo?

A. She would be from Manzanillo 243.7 miles.

Mr. HUTTON.—That is all.

Cross-examination.

Mr. LEONARD.—Q. Did you estimate how far offshore the position of the vessel would be?

A. No, I have not done that.

Q. It would be 151 miles from San Blas, you say?

A. Yes, 151.65 miles from San Blas.

Testimony of Thomas P. Deering, for Libelant.

THOMAS P. DEERING, called for the libelant, sworn.

Mr. HUTTON.—Q. Mr. Deering, you are one of the the Deputy United States Local Inspectors of Hulls in San Francisco, are you not? A. Yes.

Q. How long have you been such?

A. Twenty years I have been local inspector of the District of Alaska, and also local inspector during the interim.

Q. Prior to that you were a master mariner, were you not? A. Yes.

Q. You ran up and down the Mexican Coast for a number of years, did you not? A. Yes.

Q. For how many years?

A. Roughly, I think twenty years.

Q. You have called in at the ports of San Blas and Manzanillo a number of times, did you not?

A. Yes.

Q. Do you remember the steamer "Colima"?

A. Yes. [27]

(Testimony of Thomas P. Deering.)

Q. You sailed on her on one occasion, did you not?

A. Yes.

Q. You were not on her at the time she was lost, were you? A. No.

Q. Do you know about the vicinity that she was lost in?

A. Well, only from what I read in the newspaper. She was lost, as I read, about between Manzanillo and Acapulco; she had left Manzanillo bound for Acapulco.

Mr. LEONARD.—We object to that.

Mr. HUTTON.—Q. What kind of weather are you liable to get off San Blas and Manzanillo, between the early part of June and October?

A. Well, sometimes you have those heavy storms.

Q. When the storms blow there, do they blow very heavy?

A. Sometimes, and sometimes not; if the indications show they are going to blow very heavy, of course you pick up your anchor and get out into the gulf.

Q. Take the case of a steamer that is lying 151 miles off the port of San Blas, 240 miles or thereabouts from Manzanillo on the 27th of May, with her boiler capacity totally gone, no lights on board, hand steering, what would you say as to her condition at that time, would it be good or bad?

A. Well, if she had wireless, and the ship was sound in every other respect, I would not consider her to be in any danger.

Q. Don't you think she would be in danger?

(Testimony of Thomas P. Deering.)

A. I would not consider her so.

Q. Aren't all vessels in some danger when they go to sea? A. Oh, yes, of course.

The COURT.—Q. You mean by that she would be in a condition to call for help? A. Yes.

Q. If help did not come, what would be her condition?

A. At that distance off, she would be in a position to do considerable drifting, and in the meantime send a boat ashore for assistance. [28]

Mr. HUTTON.—Q. Would she be in more danger than if she had her boiler capacity?

A. Naturally, of course.

Q. Then there would be some risk, then, wouldn't there?

A. I do not quite understand you—risk of what?

Q. Risk of something happening to the ship.

A. Well, the boilers out of condition, and no means of making temporary repairs on board, the ship naturally would be handicapped.

Q. If she had boiler trouble for a number of days and finally got so her boilers went out of commission entirely, and she laid twenty-four hours, and there was no apparent method of getting the boilers in order again, do you think that vessel would be in a safe condition?

A. Well, I would not consider her to be in a dangerous condition, exactly.

Q. You would not consider it dangerous?

A. Not a dangerous condition, under those conditions, with the hull sound and wireless on board.

(Testimony of Thomas P. Deering.)

Q. She would not be as safe, anyway, as if she had her boilers? A. Naturally not.

The COURT.—Q. Captain, in your continual reference to wireless, the wireless would simply be a means to bring assistance? A. Yes.

Q. If she could not get assistance, then what would happen?

A. If she could not get assistance?

Q. The question here is a question of salvage, and whether anything or how much should be allowed to a ship that comes to a vessel in that condition and brings her safely to port.

A. Well, of course, your Honor, that is a pointed question; under the conditions, I would not consider the vessel to be in immediate danger, if the hull was sound, and in this vicinity she had a long way to drift.

Q. Before she would go ashore?

A. And even then she had two [29] anchors, and she had a cable of possibly 120 fathoms, so that she could drop them, and unless she had a storm—

Q. (Intg.) In the event she had a storm, then what?

A. I have known vessels to ride out of a typhoon in the Bay of Bengal with two anchors, 120 fathoms on one and 90 fathoms on the other.

Cross-examination.

Mr. LEONARD.—Q. This is about the roadstead, is it not, of vessels, about 150 miles offshore there?

A. No, that is the open ocean.

Q. Well, what I was referring to was this: What

(Testimony of Thomas P. Deering.)

would be the approximate path of coastwise vessels up and down the Coast in that vicinity?

A. The ordinary path, after making Cape San Lucas and passing Cape Corinto would be about ten miles offshore.

Q. About ten miles offshore.

A. Or eight miles.

Q. With reference to the climatic conditions at that point during the season of the year as in May and the first part of June, what, usually, are the conditions there?

A. The conditions are generally fair; of course, as Mr. Hutton has read, these heavy gales come up and give very little warning, very little warning, and in a case like that, if you are in the roadstead at San Blas, you generally stop your cargo and pick up your anchor and get into the gulf, where you have sea room, or at Manzanillo, you do the same.

Q. Do you know as to the number of vessels, more or less, that were traveling north and south on the coast at that time?

A. No, I have not been to sea for over twenty years.

Q. You do not know, approximately, from your experience, in number, what would be the travel there?

A. There is very considerable traffic now at the present date, as I understand. [30]

Redirect Examination.

Mr. HUTTON.—Q. You said that heavy gales are liable to come up there and give very little

(Testimony of Thomas P. Deering.)

warning. Do you think a vessel without any steam power at all is in a very safe position with that in view?

A. Well, you must look at that from the standpoint of a sailing vessel; you have your anchors, and if you are in a sailing vessel when these storms come up you have to get cables out, all you have, and take your chances. Of course, without power, with a steamer, you are handicapped.

Q. What you mean is this, that a vessel in that condition might weather a storm and she might not. Is that correct? A. Yes.

Q. There would be some risk, some considerable danger, attached to the fact that she would be unable to handle herself? A. Without steam?

Q. Yes.

A. Certainly; she could not be a steam vessel without steam, and in a case like that, she would have to depend solely on her anchors.

Q. There would be danger there, would there not?

A. Yes, there is always danger when you are riding through a storm.

Q. Isn't there always danger when a steam vessel is at sea? A. Yes.

Q. Without any means of propelling her?

A. Well, I do not quite get the drift of what you mean. I do not see what you mean by danger.

Q. The risk is increased, is it not, when a steam vessel is at sea without any means of propulsion?

A. Yes, she is certainly handicapped.

Q. There is liability of loss, too, is there not?

(Testimony of Thomas P. Deering.)

A. No, not necessarily, unless by a collision, or something else.

Q. Now, take the case of the "City of Omaha," 151 miles off San Blas, and 240 miles off Manzanillo, without any means of [31] propulsion at all, and no lights, no method of steering by steam, only by hand, and the hand steering-gear being aft, where you could not see a vessel ahead of you, supposing a storm would come up, what would her condition then be? Would it have been safe or unsafe?

A. She would naturally drift; if he had not a drag, he would let his anchors down 45 fathoms and drift, to bring her head on, but as to her having no lights, I do not quite understand that.

Q. The anchors do not always hold, do they, when they are lowered?

A. This is a case where there is no bottom, where they are not lowered to hold; they are lowered for the friction of the water to bring the bow of the vessel to the sea, to make her ride easier; not to anchor her; of course, she could not anchor.

Q. That would not stop her from drifting?

A. It helps materially.

Q. I say, it does not stop her from drifting?

A. It helps to stop her from drifting.

Q. Wouldn't she drift until the anchors caught on the bottom? A. She would drift; yes.

Q. Wouldn't there be some danger of drifting ashore if the wind was on the shore?

A. Well, naturally, in a case like that, the mas-

(Testimony of Thomas P. Deering.)

ter would pay out his cables say to 90 fathoms, and, naturally, the anchors would take hold of the ground in about 80 or 90 fathoms, and tend to hold her; that is what they are for, to hold her in bad weather; it naturally would hold her and bring her bow to the sea. Of course, if the storm was so terrific, would drift ashore, no doubt.

Q. I will ask you, is a vessel at sea without steam power as safe as if she had steam power?

A. No.

Q. There is some risk, then, is there not?

A. Yes. [32]

Recross-examination.

Mr. LEONARD.—Q. Would you state whether or not, in your opinion, a vessel of about 900 tons dead weight, new steel vessel, 150 miles offshore from San Blas, would ride any ordinary storm at that season of the year, from your experience, as it occurred at that particular point?

A. Well, I do not see why she should not.

Q. In your opinion, would she be able to ride out any storm that she might encounter?

A. I would not answer that question.

Q. It is just calling for your opinion. What would your opinion be: Would she ride out the storm, or would she not?

A. I could not give an opinion on that.

Q. Let me put it in this way: Suppose you were captain aboard this vessel, if a storm should arise, would you have any immediate fear of the destruc-

(Testimony of Thomas P. Deering.)

tion of the vessel, a new vessel of 900 tons dead weight?

A. Well, it all depends on the direction of the wind.

Q. The direction of the wind at that season of the year is ordinarily northwest and southeast, is it not—that is, they have one general course, do they not?

A. Yes, in the summer season.

Mr. HUTTON.—Q. Was not the “Colima” lost right in that vicinity?

A. The “Colima” was lost between Manzanillo and Acapulco, according to the papers.

Q. She was lost immediately off Manzanillo in a storm on the 27th of May?

A. Yes, that has been the report in the papers.

Mr. HUTTON.—It is agreed between us that the total wages of the officers and crew of the “City of Omaha” at the time in question were \$5,220 a month, the master’s wages was \$357.50 a month, and the supercargo’s wages was \$155 a month—I should [33] have said the “Cockaponsett,” not the “City of Omaha.”

Mr. LEONARD.—If your Honor please, the statement that Mr. Hutton has made I would agree in, with the exception of the lights. I do not think there is any evidence that can be adduced that there were no lights. It will be admitted, of course, that the general supply of steam power was not in the vessel, and she did not have the ordinary equipment of electric lights, but I believe that the emergency lights were available. I will ask to introduce

(Testimony of Thomas P. Deering.)

in evidence the deposition of the master of the "City of Omaha," A. C. Norris, and also eleven aerograms from the "City of Omaha."

I will ask to read in evidence a letter to Williams, Dimond & Co., 310 Sansome Street, San Francisco, Calif., dated June 12, 1920, from Mr. Wagner, master of the steamship "Cockaponsett":

"DIVISION OF OPERATORS.

"San Francisco, California, June 12, 1920.

"Williams, Dimond & Co.,

310 Sansome St.,

San Francisco, Calif.

Gentlemen: I beg to inform you that the wireless operator of the SS. 'Cockaponsett' overheard a conversation between the Navy Boat 'Orion' and the 'City of Omaha' at 10 A. M. of the 29th of May, relative to towing the disabled steamer 'City of Omaha' by the 'Orion' to Magdalena Bay, and have either 'Cockaponsett' or 'Diablo' call at Magdalena Bay and tow her to San Francisco.

I instructed the wireless operator to call up the 'City of Omaha' and asked if he required any assistance, and he replied in the affirmative, giving up his position as being in Lat. 21 degrees 27 miles N. 118 degrees .03 Min. W. This position was maintained until 11.45 A. M., and we sighted two steamers [34] heading to the southeast. We again got in touch with 'City of Omaha' by wireless and requested them to make a smoke for identification as he was not in the position given us. Our course was altered southwest heading for a steamer

bearing in that direction as he did not change the bearing I assumed that he was not under control and was disabled. 'City of Omaha' being twelve miles south of the position given.

We arrived alongside and had hawser fast at 12:50 P. M., and then proceeded on our way to San Pedro, Calif., 'City of Omaha' steering wildly at times. Experienced fine weather and smooth sea with brisk northwester to Cape San Lucas. When five miles west of Cape San Lazaro May the 31st, 9:28 P. M., hawser parted; was delayed until 10:34 P. M. same date in getting cable hove on and hawser made fast again; and again proceeded, 'City of Omaha' steering wildly, cutting off Log Rotator of 'Cockaponset's' log line. Engine slowed down four times to allow 'City of Omaha' to change from hand steering to steam and vice versa. Last thirty hours steering entirely by hand on 'City of Omaha.' Arrived off San Pedro Breakwater at 2:45 A. M., June 5th, 1920, laying off and on under slow bell until daylight, master not deeming it safe to enter harbor before daylight in view of the congested condition of said harbor. Cast off towline at 6:30 A. M., anchoring clear of all shipping in several fathoms of water.

Approximate time lost to 'Cockaponset' 2½ days.

Fuel consumption, 2½ days, 550 barrels of oil.

Engine oil consumption, 10 gal.

Provisions consumed, 2½ days.

Crew wages, 2½ days.

Log line and rotator lost.

Sd. N. WAGNER,

Master S.S. 'Cockaponset.'''

[Endorsed]: Filed May 11, 1921. W. B. Maling,
Clerk. By C. M. Taylor, Deputy Clerk. [35]

In the Southern Division of the United States Dis-
trict Court for the Northern District of Cali-
fornia, First Division.

IN ADMIRALTY—(Case No. 16,871).

NELSON,

Libelant,

vs.

“CITY OF OMAHA,” etc., and the UNITED
STATES OF AMERICA.

Deposition of A. C. Norris, for the Government.

BE IT REMEMBERED, that on Wednesday,
August 4th, 1920, at the office of Honorable
Francis Krull, in the Postoffice Building, corner of
Seventh and Mission Streets, in the city and county
of San Francisco, State of California, personally
appeared before me FRANCIS KRULL, a United
States Commissioner for the Northern District of
California, authorized to take acknowledgment of
bail and affidavits, etc., A. C. Norris, a witness called
on behalf of the United States of America.

E. M. Leonard, Esq., Assistant United States At-
torney, appeared as proctor for the United States
of America, and H. W. Hutton, Esq., appeared as
proctor for the libelant; and said witness, having
been by me first duly cautioned and sworn to testify
the truth, the whole truth, and nothing but the truth,

(Deposition of A. C. Norris.)

in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

(It is hereby stipulated and agreed by and between the proctors for the respective parties appearing, that the deposition of the above-named witness may be taken *de bene esse* on behalf of the United States of America, at the office of Honorable Francis Krull, in the United States Postoffice Building at the corner of Seventh and Mission Streets, in the city and county of San Francisco, on Wednesday, August 4th, 1920, before Francis Krull, a United States Commissioner for the Northern District of California, [36] and in shorthand by Erwin M. Cooper.)

(It is further stipulated that the deposition, when written up, may be read in evidence by either party on the trial of the cause, that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived, unless objected to at the time of taking said deposition, and that all objections as to materiality and competency of the testimony are reserved to all parties.)

(It is further stipulated that the reading over of the testimony to the witness, and the signing thereof, is hereby expressly waived.)

A. C. NORRIS called for the United States of America, sworn.

Mr. LEONARD.—Q. Your full name, Captain—did you give your initials to the reporter?

A. Yes, I gave him my initials.

(Deposition of A. C. Norris.)

Q. You are the master of the "City of Omaha," are you? A. Yes, sir.

Q. And you were aboard of the vessel during all the times of her maiden voyage from what port?

A. From Baltimore.

Q. And your destination, when you sailed, was—

A. Yokohama and Kobe in Japan.

Q. While, Captain, you kept a note-book, did *you memorandum* of things that occurred, for reference, on board ship? A. Yes, sir.

Q. With reference to her movements?

A. Yes, sir. [37]

Q. And you have submitted that note-book to me?

A. Yes, sir.

Q. To make copies of it.

Mr. HUTTON.—Do you want to put that in?

Mr. LEONARD.—I had better let the captain read it, and we can stipulate—I suppose you will agree if the captain checks on it, but he has not checked on it yet, and we do not want to take the time now.

Q. I wanted to know particularly, Captain, with reference to when the "City of Omaha" called for the assistance of a tow, just in a general way how that occurred.

A. Well, I had just had the wireless operator listen in to see if he could locate the "Cockaponsett."

Q. That was after—

A. After I received instructions from Struthers & Dixon, of San Francisco, stating that the Ship-

(Deposition of A. C. Norris.)

ping Board had elected either the "Cockaponsett" or the "Diablo" to tow the ship to San Francisco.

Q. When you listened in, your operator, as I understand it, located the "Cockaponsett" and signalled her; is that right? A. Yes, sir.

Q. And she came alongside?

A. She came alongside, and took us in tow.

Q. What was the condition of the weather at that time? A. The weather was fine; a light wind.

Q. And your position approximately in miles from the shore at that time was what?

A. I have the latitude and longitude but I don't have the distance exactly.

Q. Could you by referring to the engineer's log-book fix that?

A. I don't think the distance is in there.

Q. Here you are (showing paper to witness). [38]

A. Yes, that was before I stopped.

Q. You are referring now to copy of wireless which you sent to Struthers & Dixon on the 26th day of May? A. Yes, sir.

Q. Beg pardon; I believe you stated the 25th of May, and received the 26th?

A. Yes. You wanted the approximate distance from the shore.

Q. I want you to give me the approximate distance from shore she was at that time.

A. I have not the distance here; I just put down the latitude and longitude, and I have not the distance; I would have to measure it on the chart.

Q. We will pass that. Now, when the "Cockapon-

(Deposition of A. C. Norris.)

sett" came alongside to give you tow, will you explain how the towing, the passing of the hawser was accomplished?

A. Yes. Well, when he came up close to the ship he just stopped his engines and we put out our work boat and run him a four-inch manila rope, you see, and he took this four-inch manila rope from our work boat, took one end of it, and the other end was bent on to our hawser, you see, our steel wire hawser, and he just hove the steel wire hawser aboard with his steam gear.

Q. What, in addition to the hawser, did you have to make your tow-line?

A. Well, we had the steel wire hawser, and then we had the ship's cable out besides that.

Q. You used the anchor chain of your vessel, did you? A. Yes, sir; and our steel wire hawser.

Q. The towing apparatus was entirely furnished by the "City of Omaha," was it, if I understand you correctly? A. Yes.

Q. And your boat passed the line aboard?

A. Yes, sir.

Q. Now, were there some difficulties in towing?
[39]

A. Well, the greatest difficulty was experienced—was, we had no steam to steer by, you see, we had to use our hand gear for steering the ship, and it was situated away in the stern of the ship, away from the bridge, you see, and, of course, the ship did not steer good when she was being towed, as the hand gear, you see—you could not move the helm so quick as you

(Deposition of A. C. Norris.)

could with steam, and it made it a little difficult for him towing her on account of us not having any steam on our ship to steer by.

Q. According to the notes that I have received from you, it seems that the hawser parted on the trip from where you were taken in tow to San Pedro?

A. Yes, sir.

Q. How was the return of the hawser, or the making fast, accomplished in that instance—was it your boat or the “Cockaponsett” boat?

A. It was the “City of Omaha” boat. It was the same procedure that was taken for to get her up on this second occasion.

Q. Your passing of the line to the “Cockaponsett” was accomplished by your crew?

A. Yes, sir. I might state that as his boat was in a very difficult place to launch that it made it quicker work, as the weather was smooth, for us to put our boat, you see. He had his boat, his work boat, inside of his life-boat. That made it so he would have to launch his life-boat first, and then put out his work boat.

Q. It was inconvenient for him to get his work boat out?

A. Yes, sir. It was inconvenient for him to get his work boat out.

Q. Were you spoken by other vessels while you were drifting after your boat became disabled?

A. Yes, sir; while the engines were giving me trouble I was spoken by several. [40]

Q. What was your position with reference to the

(Deposition of A. C. Norris.)

passage of vessels—were you in the path of vessels around at the time?

A. Yes, sir. We were pretty near directly in the path of vessels coming from United States ports to the Canal Zone.

Q. You did not drift out of the course at any time, did you—or did you?

A. Not very much, sir. We were more or less in the track all the time. When we did drift, we were drifting south, but it was was not east or west of the port.

Q. And during all of the time that you were drifting or disabled, what would you say the condition of the weather was?

A. The weather was fine all the time.

Mr. LEONARD.—I presume, Mr. Hutton, that we can stipulate with reference to these wireless telegrams. I really have not had a chance to go through them myself.

Mr. HUTTON.—Certainly.

Mr. LEONARD.—Q. Regarding the injury to the ship, Captain, where did that occur?

A. That occurred in the Panama Canal, sir.

Q. And therefore would have occurred at the time that you had a pilot for the canal, would it?

A. Yes, sir.

Q. As I understand from your notes, you had had difficulty with the telemotor; that, I understand, is a mechanism for directing the propeller, is it?

A. Yes; it is an electric control to the steam-steering gear.

(Deposition of A. C. Norris.)

Q. It is an electric control to the steam-steering gear? A. Yes, sir.

Q. You had had some trouble with that, I understand from your notes, in the canal; and due to that difficulty, she ran aground? A. Yes, sir. [41]

Q. And your survey at San Francisco has developed, I suppose, just about what took place?

A. Yes, sir.

Q. Could you tell us just in a layman's way, so that we will understand, what did take place?

A. Will you allow me to read that off?

Q. What is this that you have Captain?

A. It is just a report about the accident in the canal, you see.

Q. I see. Well, we can get that and use that, if that is what you are going to refer to.

A. Yes, sir. It is really an extension of my protest, you see, but I thought I could read the words off.

Q. If you will tell us so that we can know just about—

A. This was April 11th, when the ship was at the entrance to Gomboa Reach to the Panama Canal, 500 feet north of beacon number eight, the electric telemotor control to the steering gear failed to operate. Engines were immediately put full speed astern, and the port anchor let go. This failed to stop ship headway sufficiently, and she struck the bank head on, during injury to the shell in the wake of the forepeak. The forepeak was sounded and ship was found to be making water in that compart-

(Deposition of A. C. Norris.)

ment. Vessel proceeded to Balboa assisted by tug, where she arrived at — P. M. of the same day.

Q. That is as far as we want that report. That denotes how the accident occurred? A. Yes, sir.

Q. You are reading now from the Marine Protest made by you?

A. This is an extension of the protest.

Q. I see. Now, Captain, can you find in this something with reference to what was to be the damage to the vessel by reason of that running aground?

A. Yes, sir. This was at the same—well, this was while we were at Balboa. Surveys were held by surveyors appointed by Lloyd's agents, and after temporary repairs had been made, the vessel [42] was granted a seaworthy certificate to proceed to a United States port for further examination.

Q. What I wanted to get at, Captain, was, what was the nature of the injury to the vessel—was there a buckling of the plates on the bottom, that, I presume, would be disclosed by the examination of the vessel in drydock at San Francisco?

A. Yes. Well, here was April 12th, 7:30 A. M., reported accident to the Shipping Board agent and asked for survey to be held.

Q. Now, you are reading from your notes?

A. Yes.

Q. I have all of that, Captain, A. Yes, sir.

Q. There has nothing been added to that?

A. Yes, sir. There was a diver engaged and he made an examination by going down, you see.

Q. I understand from having read your notes that

(Deposition of A. C. Norris.)

the bottom of the ship was somewhat disturbed by the collision? A. Yes, sir.

Q. And that brickwork under the boilers was also disturbed?

A. No, the brickwork under the boilers was not injured through the force of the accident.

Q. Did you have any trouble with that brickwork before you had the collision?

A. We had some trouble with the boilers coming from Baltimore to Colon.

A. You did? A. Yes, sir.

Q. As I understand from your notes, the brickwork collapsed after you left the canal?

A. Yes, sir.

Q. And you had to put in— A. To Salina Cruz.

Q. To Salina Cruz to rebuild it? A. Yes, sir.

Q. How many boilers did she have?

A. Three boilers.

Q. And there were two of them out of use when you went in there? A. One was out of commission.

Q. One was out of commission?

A. And the other two were [43] in bad shape. We went in there under reduced speed.

Q. Is there anything you could give us telling whether or not it was the collision that caused that or not?

A. Only what I could say verbally, that it really—the collision did not have anything to do with the boilers.

Q. The fact of the matter is that you had trouble with the boilers, and that was part of the trouble that

(Deposition of A. C. Norris.)

put you adrift, was it not—put you out of commission when you were finally towed?

A. Yes, it was the fault of the boilers.

Q. As I notice from your notes, you had been fighting to have your boilers making steam for quite a while even after you arrived at Salina Cruz?

A. Yes, sir.

Cross-examination.

Mr. HUTTON.—Q. Was the forepeak full of water?

A. Yes. After the accident the forepeak filled up right immediately.

Q. Did it remain filled, or did you stop the leak?

A. Well, we had a diver go down and put a soft patch outside, or drive some wedges in first, and made a temporary repair, and then we were able to put the pump on and pump the peak out, and made an inside examination.

Q. How was it on the way up the coast—was the forepeak full of water or not?

A. No, sir. The temporary repairs were made at the canal.

Q. That fixed that?

A. Yes, sir. We filled the ship up with cement where the damage was.

Q. You had trouble with the boilers from Baltimore to Colon?

A. We had slight trouble with them. The ship smoked very badly, and tubes got soaked with soot, and when we opened them up at the canal they were—we had to renew some of the tubes in the starboard boiler. [44]

(Deposition of A. C. Norris.)

Q. What kind of boilers are they? Babcock and Wilcox, or Scott's?

A. They are Foster Marine type of boilers.

Q. After you left Balboa, did you have trouble with the boilers again? A. Yes, sir.

Q. When did it commence?

A. Well, it commenced on the 23d.

Q. Of April?

A. 23d of April. I left Balboa on the 22d, and on the 23d we experienced trouble with one of the boilers.

Q. Ship slow down any? A. Yes, sir.

Q. From what speed to what?

A. She went from about nine knots to about six.

Q. And did the trouble get worse or better, Captain? A. The trouble got worse all the time.

Q. And finally you concluded to put into Salina Cruz? A. Yes, sir.

Q. Was that the first port you called at after Balboa? A. Yes, sir.

Q. How long did you stay in Salina Cruz?

A. Eighteen days.

Q. Repairing the boilers? A. Yes, sir.

Q. Working on them all the time?

A. Practically all the time—well, there was a little time lost; I lost two days before I got into the inner harbor.

Q. You went in for that purpose, to repair the boilers? A. Yes, sir.

Q. After you left Salina Cruz, did you call in at Acapulco? A. No, sir.

(Deposition of A. C. Norris.)

Q. No ports at all. A. No, sir.

Q. What was your voyage, Captain; if nothing had happened to the vessel, would you have called in at San Francisco?

A. No, sir; I was going from Panama or from Balboa down to Honolulu.

Q. And you would have replenished your fuel oil there? A. Yes, sir. [45]

Q. But the trouble with the boilers and the forepeak occasioned your diverting your passage?

A. Yes, sir.

Q. After you left Salina Cruz did you have any trouble with your boiler? A. Yes, sir.

Q. What was your trouble?

A. It was with the brickwork under the boilers and tubes letting go.

Q. Commenced right away?

A. Well, I sailed the 17th, and on the 20th experienced boiler trouble; I mean 17th of May.

Q. How many miles an hour did she make after she left Salina Cruz, when she first left Salina Cruz?

A. How many miles an hour?

Q. An hour.

A. When I left there she made about nine and a half knots after leaving there, and then, when we experienced boiler trouble, she slowed down to six and from six to three knots.

Q. Finally she stopped altogether?

A. Finally she stopped altogether.

Q. What is her normal speed when in good condition? A. About ten knots, ten miles an hour.

(Deposition of A. C. Norris.)

Q. Now, did you go any way close to Acapulco as you passed there? A. No, sir.

Q. You were north of Acapulco and north of Manzanillo when you were picked up?

A. Yes, sir, about 180 miles away from Cape San Lucas; I wouldn't say exact.

Q. Were you south of Cape San Lucas?

A. Yes, sir.

Q. Did you have any bad weather crossing the Gulf of Tehuantepec? No, sir.

Q. Smooth water all the time?

A. Smooth water all the time.

Q. When did she finally stop altogether, Captain?

A. On may 27th, 4:27 A. M., we proceeded ahead on engine, and at 9:00 A. M. she stopped altogether, and then we got her started again at 9:52 the same date—9:52; and then at 12:25 P. M. on [46] the 27th we stopped.

Q. Had you been having those stops all the way from Salina Cruz?

A. Yes, sir; we made several stops.

Q. How many a day did they average?

A. We were stopped—on one occasion we were stopped over twenty-four hours—thirty-one hours.

Q. How long was that before you were picked up, that is, before you finally stopped.

A. That was May 27th she stopped.

Q. Then you had several stops per day at intervals, Captain, until you stopped altogether and could not proceed? A. Yes, sir.

Q. How is the ship lighted or illuminated? I

(Deposition of A. C. Norris.)

mean at night-time how do you light her—with electricity or oil?

A. With electricity when the dynamos are running.

Q. When your steam gave out, how did you make out for light? A. Well, we had oil lamps.

Q. You did finally get so that you could not light the ship by electricity, did you not? A. Yes, sir.

Q. How long did that last?

A. From the 29th of May up to June 5th. There was just one day that we had steam on the ship.

Q. And was that in one of the main boilers, or the donkey boiler? A. It was one of the main boilers.

Q. Can you operate the dynamos from the donkey boilers?

A. We had no donkey boiler; we just had the three main boilers.

Q. When you have no steam, Captain, you cannot steer the ship by steam, of course? A. No, sir.

Q. Did you have to steer by hand all the way up the coast after you were picked up?

A. Yes, sir, just with the exception of one day, we had steam on the boilers.

Q. Did that boiler give out again?

A. It gave out again; yes, sir. [47]

Q. The difference between steering by steam and hand is that by hand you have a block and fall attachment to a wheel?

A. We have a screw-worm attached to the quadrant.

Q. It is much slower than the other?

(Deposition of A. C. Norris.)

A. It is much slower than the steam. It was a very difficult place where it was situated. It was away in under the poop-deck, and there was no means of seeing the other ship.

Q. You cannot see ahead?

A. No, sir. We used the voice tube from the bridge.

Q. When you came up the coast after passing Cape San Lucas, did you go inside of those three islands that are down there or outside?

A. We went inside.

Q. Had any wind at all?

A. There was a little wind one day in the afternoon from the north.

Q. Does it ever blow down between Cape San Lucas and Manzanillo?

A. Oh, yes, sir. We get some very bad storms sometimes in the year, generally in the winter season.

Q. Was not the steamer "Colima" lost right in that vicinity—are you familiar with that?

A. No, sir; I am not very familiar with that coast, but the sailing directions, they mentioned about the storms on the coast, in fact, all along the Mexican coast in the winter season.

Q. They blow out of the Gulf of California, don't they? A. Yes, sir.

Q. And you were practically at the mouth of the Gulf of California? A. Yes, sir.

Q. Do you know whether you *were* or not you were to the north or south of Cape San Blas?

A. I can't just recollect where San Blas is located now.

(Deposition of A. C. Norris.)

Q. That is north of Manzanillo and south of Mazatlan; you were offshore? [48]

A. You see, when the engines finally stopped altogether, I was steering across on an angle for Cape San Lucus, so I was well offshore, clear of the coast. I had left the Mexican coast down below before I got to the Gulf of California. I had left the Mexican Coast and steered right across for the extreme end of the Peninsula there, Cape San Lucas.

Q. How many days were you stopped when the "Cockaponsett" picked you up?

A. She was stopped from the 27th to the 29th; forty-eight hours.

A. You had no steam at all during that time?

A. No, sir—well, I did make a little; they tried the engines out, and they did not run an hour; not much more than half an hour, and then they stopped again; it was hard to work.

Q. What was the trouble with the boilers, Captain, do you know?

A. Well, of course, they were these water tube boilers, and I think there was some neglect attached to it.

Q. Water tube boilers are quite a common type nowadays; other ships seem to get along.

A. Of course, there was a licensed man there handling the boilers, and I am not in a position to say what did happen then.

Q. Of course, you are not an engineer?

A. But my opinion is that part of the trouble was due to neglect, perhaps allowing salt water into the boilers.

(Deposition of A. C. Norris.)

Q. How many days was it, Captain, from the time that you left Balboa to the time you arrived in San Pedro?

A. I left Balboa the 22d day of April; that would be eight days in April, and then I was all May; that is thirty-one, and five days in June—forty-four days.

Q. The average passage for a ship like that would be ten to twelve days, would it not? [49]

A. Yes, sir—oh, less than that; I think to San Pedro—it would be about ten days to—eleven days to San Francisco; about nine days, I should say.

Q. How many miles did the “Cockaponsett” tow you? A. 952 miles.

Q. How many days did it take you?

A. It took—well, pretty near six days—over five and a half days.

Q. Expecting to go out again, Captain, expecting the ship “City of Omaha” to leave San Francisco again?

A. Yes, sir, I will be leaving to-morrow afternoon.

Q. Going to continue her voyage? A. Yes, sir.

Q. The same cargo on board?

A. Yes, sir, the same cargo.

Q. Have you been under repairs in San Francisco all the time?

A. Yes, sir. When I arrived here they took half of the cargo out of the ship and she went on the drydock and she made repairs to the hull, and she came off drydock and the cargo was reloaded, and now the repairs on the engines and boilers are being completed.

(Deposition of A. C. Norris.)

Q. Where were the repairs made—Union Iron Works?

A. Yes, sir; the Union Iron Works done the repairs.

Q. Do you know how many steamers go up and down the coast, Captain, per month.

Q. No sir, I do not; I am not very familiar with this coast.

Q. Were you in wireless communication with any other steamers but the "Diablo" and the "Cockaponsett"?

A. Yes, sir, there were two steamers spoke me, wanted to know if I wanted assistance.

Q. Were they bound south or bound north?

A. They were both bound south.

Q. So, if you had got assistance from them, they would have had to give up that trip and tow you; they would have to proceed north again?

A. Yes, sir. [50]

Q. Do you remember what steamers they were?

A. Well, one was the "Melville Dollar" and the other was a Shipping Board ship; I have forgotten her name now.

Q. How far away was the "Cockaponsett" when you first got in wireless communication with her?

A. Why she was about, I should say, about twenty miles away.

Q. And the other one, the "Diablo," where was she?

A. Well, I never got into communication with him until I was part way towed from this position, you see, to San Pedro.

(Deposition of A. C. Norris.)

Q. Then, up to the time you were taken in tow, you were only in communication with three vessels, Captain; is that correct—that is, the “Melville Dollar” and the Shipping Board Ship and the “Cockaponsett”?

A. Yes, sir. Then there was a Norwegian ship, the “Senator,” I think it was the “Senator”; he spoke me just before the “Cockaponsett” picked me up; he was bound south also.

Q. How many fathoms of towing apparatus did you have out?

A. Well, first I had ninety fathoms of steel wire hawser, and then I had forty-five fathoms of cable, ship’s anchor chains, and then when the hawser parted the second time, I gave him a hundred and twenty fathoms of another steel wire hawser, and I gave him sixty fathoms of chain.

Q. That made the towing easier? A. Yes, sir.

Mr. HUTTON.—I think that is all, Captain.

Mr. LEONARD.—That is all. [51]

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

I certify that, in pursuance of notice and stipulation of the proctors for the respective parties, on Wednesday, August 4th, 1920, before me, Francis Krull, a United States Commissioner for the Northern District of California, at San Francisco, at my office in the building known as the United States Postoffice Building, corner of Seventh and Mission Streets, in the city and county of San Francisco,

State of California, personally appeared A. C. Norris, a witness called on behalf of the United States of America, in the cause entitled in the caption hereof; and E. M. Leonard, Esq., Assistant United States District Attorney, appeared as proctor for the United States of America, and H. W. Hutton, Esq., appeared as proctor for the libelant; and the said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause, deposed and said as appears by his deposition hereto annexed.

I further certify that the deposition was then and there taken down in shorthand by Erwin M. Cooper, and thereafter reduced to typewriting; and I further certify that by stipulation of the proctors for the respective parties, the reading over of the deposition to the witness, and the signing thereof was expressly waived.

And I do further certify that I have retained the said deposition in my possession for the purpose of delivering the same with my own hand to the clerk of the United States District Court for the Northern District of California, the court for which the same was taken. [52]

And I do further certify that I am not of counsel nor attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

IN WITNESS WHEREOF, I have hereunto set my hand in my office aforesaid, this 9th day of August, 1920.

[Seal] FRANCIS KRULL,
United States Commissioner, Northern District of
California, at San Francisco, California.

[Endorsed]: Filed Nov. 5, 1920. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [53]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,871.

R. J. NELSON et al.,

Libelants,

vs.

“CITY OF OMAHA,” etc., and UNITED STATES
OF AMERICA et al.

Respondents.

(Opinion.)

H. W. HUTTON, Esq., Proctor for Libelants.

FRANK M. SILVA, Esq., United States Attorney,
and E. M. LEONARD Esq., Assistant United
States Attorney, Attorneys for Respondents.

Considering the value of the salved and salving vessels, the distance traveled and the weather conditions prevailing, an award equal to two months' pay for each libelant will in my judgment be just. A decree will be entered accordingly.

February 18th, 1921.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Feb. 18, 1921. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [54]

In the Southern Division of the District Court of
the United States in and for the Northern
District of California, First Division.

IN ADMIRALTY—(No. 16,871).

R. J. NELSON et al.,

Libelants,

vs.

Steam Vessel "CITY OF OMAHA," Her Engines,
and Boilers, Tackle, Apparel and Furniture
and Cargo, and the UNITED STATES OF
AMERICA,

Respondents.

(Decree.)

This cause having been brought on to be heard on the pleadings and proofs and the arguments and briefs of the respective parties, and the cause having been submitted to the Court for decision, and the Court being fully advised in the premises, now, therefore, by reason of the matters set forth in the pleadings and shown by the proofs herein, it is ORDERED, ADJUDGED AND DECREED, and this does ORDER, ADJUDGE and DECREE, that libelants have and recover from the steam ves-

- sel, "City of Omaha," her engines and boilers, tackle, apparel and furniture, and her cargo, and the United States of America, and that the United States of America pay to the libelants or to H. W. Hutton, Esquire, their proctor for them, for salvage services rendered by said libelants to the said steam vessel "City of Omaha," her said engines and boilers, tackle, apparel and furniture and cargo, the same being in amount two months' pay to each of the libelants, the following sums respectively:
- To libelant R. J. Nelson, the sum of one hundred and eighty (\$180.00) dollars.
- To M. Burns, the sum of four hundred and fifty-six and 50/100 (\$456.50) dollars.
- To James Allen, the sum of four hundred (\$400.00) dollars.
- To R. W. Kelly, the sum of three hundred and fifty-two and 50/100 (\$352.50) dollars. [55]
- To C. Vanderley, the sum of two hundred and ten (\$210.00) dollars.
- To G. Swanson, the sum of one hundred and ninety (\$190.00) dollars.
- To C. B. Petterson, the sum of one hundred and eighty (\$180.00) dollars.
- To K. H. Niemi, the sum of one hundred and eighty (\$180.00) dollars.
- To Peter Emmers, the sum of one hundred and eighty (\$180.00) dollars.
- To S. Johanssen, the sum of one hundred and eighty (\$180.00) dollars.
- To Andries van Roon, the sum of one hundred and eighty (\$180.00) dollars.

To Lenhart Saarnie, the sum of one hundred and eighty (\$180.00) dollars.

To F. Jorgensen, the sum of one hundred and eighty (\$180.00) dollars.

To L. R. Drake, the sum of one hundred and thirty (\$130.00) dollars.

To A. A. Krutmeyer, the sum of two hundred and ten (\$210.00) dollars.

To John R. Whalen, the sum of one hundred and eighty (\$180.00) dollars.

To V. J. Ricardo, the sum of one hundred and eighty (\$180.00) dollars.

To C. J. Sullivan, the sum of one hundred and eighty (\$180.00) dollars.

To J. E. Gough, the sum of one hundred and eighty (\$180.00) dollars.

To A. H. Lake, the sum of one hundred and eighty (\$180.00) dollars.

To P. S. Murray, the sum of one hundred and eighty (\$180.00) dollars.

To E. J. Farrell, the sum of one hundred and eighty (\$180.00) dollars. [56]

To R. Schulz, the sum of one hundred and eighty (\$180.00) dollars.

To Patrick O'Mara, the sum of one hundred and eighty (\$180.00) dollars.

To S. H. Hinrichi, the sum of one hundred and eighty (\$180.00) dollars.

To D. L. Heywood, the sum of one hundred and eighty (\$180.00) dollars.

And to James Moore, the sum of one hundred and eighty dollars, all libelants as aforesaid, and all

with their costs to be taxed, and interest from the date of this decree.

It is FURTHER ORDERED, ADJUDGED AND DECREED, that upon the making payment of the above amounts to said H. W. Hutton, proctor for said libelants, this judgment and decree be adjudged to have been satisfied and paid to the libelants above mentioned.

Dated March 1st, 1921.

M. T. DOOLING,
District Judge.

[Endorsed]: Filed Mar. 1, 1921. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [57]

In the Southern Division of the District Court of the United States in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,871.

R. J. NELSON et al.,

Libelants,

vs.

Steam Vessel "CITY OF OMAHA," etc., and the
UNITED STATES OF AMERICA,

Defendants.

(Stipulation Re Modification of Decree.)

It is hereby stipulated, that the decree herein reads, "To L. R. Drake, the sum of one hundred and thirty (\$130.00) dollars," and not one hundred and eighty (\$180.00) dollars.

That on the third day of March, 1921, at the hour of ten o'clock in the forenoon, defendants moved the above court to modify the decree herein by striking out the words "the steam vessel 'City of Omaha,' her engines and boilers, tackle, apparel and furniture and her cargo," and between the words "have and recover" and the words "the United States of America" on the first page of said decree, so that said decree should read "have and recover from the United States of America," alone, that counsel for libelants was present and resisted said motion, but said motion was granted by the Court.

This stipulation is made to show that such action was taken by the Court, as there does not appear to be any record thereof.

Dated March 21st, 1921.

H. W. HUTTON,
Proctor for Libelants.

FRANK M. SILVA,
U. S. Attorney.

FREDERICK MILVERTON,
Special Asst. U. S. Atty. in Admiralty,
Proctor for United States of America.

[Endorsed]: Filed Mar. 22, 1921. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [58]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

IN ADMIRALTY—(No. 16,871).

R. J. NELSON, M. BURNS, JAS. ALLEN, R. W. KELLY, C. VANDERLEY, G. SWANSON, C. B. PETTERSON, K. H. NIEMI, PETER EMMERS, S. JOHANNSEN, ANDRIES van ROON, LENHART SAARNIA, L. R. DRAKE, F. JORGENSEN, A. A. KRUTMEYER, JOHN R. WHALEN, V. J. RISARDO, C. J. SULLIVAN, J. E. GOUGH, A. H. LAKE, P. S. MURRAY, E. J. FARRELL, R. SCHULTZ, S. H. HINRICHI, D. L. HEYWOOD, JAMES MOORE and PATRICK O'MARA,

Libelants,

vs.

Steam Vessel "CITY OF OMAHA," Her Engines, Boilers, Tackle, Apparel, Furniture and Cargo, and the UNITED STATES OF AMERICA,

Respondents.

Notice of Appeal.

To the Libelants Above Named, and to H. W. Hutton, Esq., Their Proctor:

You and each of you are hereby notified that the United States of America, respondent above named, intends to and hereby does appeal from the decision and final decree made and entered in the

above-entitled court and cause on the 1st day of March, 1921, as amended on the 3d day of March, 1921, to the United States Circuit Court of Appeals for the Ninth Circuit, and, in accordance with the practice and procedure in admiralty, intends to and will make application for leave of the Honorable United States Circuit Court of Appeals for the Ninth Judicial Circuit, to take new proofs before said court in support of the allegations and facts set forth and contained in the several paragraphs of the said respondent's answer filed in said suit.

Dated at San Francisco, California, this 14th day of April, 1921.

FRANK M. SILVA,

United States Attorney,

FREDERICK MILVERTON,

Special Assistant United States Attorney in Admiralty,

Proctors for Respondent United States of America.

[59]

[Endorsed]: Filed Apr. 15, 1921. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [60]

In the Southern Division of the United States District Court in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,871.

R. J. NELSON, M. BURNS, JAS. ALLEN, R. W. KELLY, C. VANDERLEY, G. SWANSON, C. B. PETTERSON, K. H. NIEMI, PETER EMMERS, S. JOHANNSEN, ANDRIES van ROON, LENHART SAARNIA, L. R. DRAKE, F. JORGENSEN, A. A. KRUTMEYER, JOHN R. WHALEN, V. J. RISARDO, C. J. SULLIVAN, J. E. GOUGH, A. H. LAKE, P. S. MURRAY, E. J. FARRELL, R. SCHULZ, S. H. HINRICHI, D. L. HEYWOOD, JAMES MOORE and PATRICK O'MARA,

Libelants,

vs.

Steam Vessel "CITY OF OMAHA," Her Engines, Boilers, Tackle, Apparel, Furniture and Cargo, and the UNITED STATES OF AMERICA,

Respondents.

Petition for Appeal.

The above-named respondent, the United States of America, conceiving itself aggrieved by the final decree made and entered in the above-entitled cause on the 1st day of March, 1921, as amended on the 3d day of March, 1921, wherein and whereby it was ORDERED, ADJUDGED AND DECREED that

the libelants above named have and recover against the said United States of America, two months' pay to each of said libelants for salvage services rendered by them to the S. S. "City of Omaha," together with costs and interest from the date of said judgment, does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from said decree, for the reasons set forth in the assignment of errors filed herewith, and said respondent prays that its petition herein for its said appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit. [61]

Dated at San Francisco, California, this 14th day of April, 1921.

FRANK M. SILVA,

United States Attorney,

FREDERICK MILVERTON,

Special Assistant United States Attorney in Admiralty,

Proctors for Respondent United States of America.

Order Allowing Appeal.

Upon the foregoing petition of the United States of America, respondent above named, praying for the allowance of an appeal in the above-entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit, it appearing to the Court that said respondent has duly filed its assignment of errors as required by law, and the rules of said United States Circuit Court of Appeals for the Ninth Circuit; now, therefore,

IT IS HEREBY ORDERED that the said appeal be and the same is hereby allowed as prayed for.

Dated at San Francisco, California, this 14th day of April, 1921.

W. H. HUNT,

Judge of said United States Circuit Court.

[Endorsed]: Filed Apr. 15, 1921. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [62]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,871.

R. J. NELSON, M. BURNS, JAS. ALLEN, R. W. KELLY, C. VANDERLEY, G. SWANSON, C. B. PETTERSON, K. H. NIEMI, PETER EMMERS, S. JOHANNSEN, ANDRIES van ROON, LENHART SAARNIA, L. R. DRAKE, F. JORGENSEN, A. A. KRUTMEYER, JOHN R. WHALEN, V. J. RISARDO, C. J. SULLIVAN, J. E. GOUGH, A. H. LAKE, P. S. MURRAY, E. J. FARRELL, R. SCHULZ, S. H. HINRICHI, D. L. HEYWOOD, JAMES MOORE and PATRICK O'MARA,

Libelants,

vs.

Steam Vessel "CITY OF OMAHA," Her Engines, Boilers, Tackle, Apparel, Furniture and Cargo, and the UNITED STATES OF AMERICA,

Assignment of Errors.

Now comes the United States of America, one of the respondents above named, and says:

That in the record of proceedings in the above-entitled cause there is manifest error, and said respondent now makes, files and presents the following assignment of errors upon which it will rely upon the appeal of said cause, to the Circuit Court of Appeals for the Ninth Judicial Circuit, as follows, to wit:

1. The Court erred in awarding to the said libelants or to any of them any amount whatsoever for alleged salvage services to the said S. S. "City of Omaha."

2. The Court erred in awarding to the said libelants and to each of them two months' pay for salvage services alleged to have been rendered by them to the said steam vessel "City of Omaha," and in awarding to said libelants and to each of them any amount in excess of one month's pay to each of them as compensation for said alleged salvage services. [63]

3. The Court erred in failing to render a decision and order judgment entered in favor of the said respondent, the United States of America, dismissing the libel of said libelants filed in said cause.

4. The Court erred in awarding to the said libelants and to each of them any amount whatsoever, for the reason that said libelants were at the time of the alleged salvage services members of the crew of a vessel belonging to the United States of

America, and rendered salvage services, if any, to a vessel likewise belonging to the said United States of America, by reason thereof it became the duty of the said libelants and each of them to render said services without compensation beyond their wages as seamen on said United States vessel.

Dated at San Francisco, California, this 14th day of April, 1921.

FRANK M. SILVA,

United States Attorney,

FREDERICK MILVERTON,

Special Assistant United States Attorney in Admiralty,

Proctors for Respondent United States of America.

[Endorsed]: Filed Apr. 15, 1921. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [64]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,871.

R. J. NELSON, M. BURNS, JAS. ALLEN, R. W. KELLY, C. VANDERLEY, G. SWANSON, C. B. PETTERSON, K. H. NIEMI, PETER EMMERS, S. JOHANNSEN, ANDRIES van ROON, LENHART SAARNIA, L. R. DRAKE, F. JORGENSEN, A. A. KRUTMEYER, JOHN R. WHALEN, V. J. RISSARDO, C. J. SULLIVAN, J. E. GOUGH, A. H. LAKE, P. S. MURRAY, E. J. FAR-

RELL, R. SCHULZE, S. H. HINRICHI,
D. L. HEYWOOD, JAMES MOORE and
PATRICK O'MARA,

Libelants,

vs.

Steam Vessel "CITY OF OMAHA," Her Engines,
Boilers, Tackle. Apparel, Furniture and
Cargo, and the UNITED STATES OF
AMERICA,

Respondents.

Supersedeas.

The United States of America, one of the respondents above named, having duly given notice of appeal from the decision and final decree in the above-entitled cause entered on the 1st day of March, 1921, as amended on the 3d day of March, 1921, and having duly filed its assignment of errors upon said appeal,—

IT IS HEREBY ORDERED that said decision and decree be and the same is hereby superseded and all proceedings thereunder stayed.

April 14, 1921.

W. H. HUNT,

Judge of the Above-entitled Court.

[Endorsed]: Filed Apr. 15, 1921. W. B. Maling,
Clerk. By C. M. Taylor, Deputy Clerk. [65]

In the Southern Division of the United States
District Court for the Northern District of
California, First Division.

IN ADMIRALTY—No. 16,871.

R. J. NELSON, et al.,

Libelants,

vs.

Steam Vessel "CITY OF OMAHA," Her Engines,
Boilers, Tackle, Apparel, Furniture and
Cargo, and the UNITED STATES OF
AMERICA,

Respondents.

**Stipulation (and Order that Original Exhibits be
Transmitted to U. S. Circuit Court of Appeals).**

It is hereby stipulated by and between the parties
above named that upon the appeal of the above-
named respondents in the above-entitled cause there
may be transmitted to the clerk of the Circuit Court
of Appeals for the Ninth Circuit all the exhibits
filed in said cause in their original form.

Dated this 15th day of April, 1921.

H. W. HUTTON,

Proctor for Libelants.

FRANK M. SILVA,

United States Attorney.

FREDERICK MILVERTON,

Special Assistant United States Attorney in Ad-
miralty.

It is so ordered.

WM. W. MORROW,

United States Circuit Judge.

[Endorsed]: Filed Apr. 18, 1921. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [66]

**Certificate of Clerk U. S. District Court to Apostles
on Appeal.**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 66 pages, numbered from 1 to 66, inclusive, contain a full, true and correct transcript of certain records and proceedings, in the case of R. J. Nelson et al. vs. the Steam Vessel "City of Omaha," etc., No. 16871, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the praecipe for apostles on appeal (copy of which is embodied herein,) and the instructions of the proctor for respondent and appellant.

I further certify that the cost for preparing and certifying the foregoing transcript on appeal is the sum of Twenty-five Dollars and Seventy-five Cents (\$25.75), and that the same will be charged against the United States in my quarterly report for the quarter ending June 30th, 1921.

Annexed hereto is the original Citation on Appeal, issued herein (page 68).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 13th day of May, A. D. 1921.

[Seal]

WALTER B. MALING,

Clerk.

By C. M. Taylor,

Deputy Clerk. [67]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,871.

R. J. NELSON, M. BURNS, JAS. ALLEN, R. W. KELLY, C. VANDERLEY, G. SWANSON, C. B. PETTERSON, K. H. NIEMI, PETER EMMERS, S. JOHANNSEN, ANDRIES van ROON, LENHART SAARNIA, L. R. DRAKE, F. JORGENSEN, A. A. KRUTMEYER, JOHN R. WHALEN, V. J. RISSARDO, C. J. SULLIVAN, J. E. GOUGH, A. H. LAKE, P. S. MURRAY, E. J. FARRELL, R. SCHULZ, S. H. HINRICHI, D. L. HEYWOOD, JAMES MOORE and PATRICK O'MARA,

Libelants,

vs.

Steam Vessel "CITY OF OMAHA," Her Engines, Boilers, Tackle, Apparel, Furniture and Cargo, and the UNITED STATES OF AMERICA,

Respondents.

Citation.

United States of America,

Northern District of California,—ss.

The President of the United States of America, to the Libelants Above Named, GREETING:

You and each of you are hereby cited and admonished to be and appear before the United States

Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, in the State of California, within thirty days from the date of this citation, pursuant to an appeal filed in the clerk's office of the Southern Division of the District Court of the United States in and for the Northern District of California, in the above-entitled proceeding, wherein the above-named United States of America is respondent and you are the respective libelants, to show cause, if any there be, why the decree entered in the above-entitled proceeding on the 1st day of March, 1921, as amended on the 3d day of March, 1921, in said appeal mentioned, and thereby appealed from, [68] should not be corrected and reversed, and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable W. H. HUNT, Judge of the District Court in and for the Southern Division of the District Court of the United States in and for the Northern District of California, at the city of San Francisco, State of California, this 14th day of April, 1921.

W. H. HUNT,

United States Circuit Judge.

Service of a copy of the within citation, and of notice of appeal, petition on appeal, order allowing appeal, assignment of errors, and order of super-sedeas, in the above-entitled cause, are hereby admitted this 14th day of April, 1921.

G. W. HUTTON,

Proctor for Libelants. [69]

[Endorsed]: No. 16,871. In the Southern Division of the District Court of the United States for the Northern District of California, First Division. In Admiralty. R. J. Nelson et al., Libelants, vs. Steam Vessel "City of Omaha," etc., and the United States of America, Respondents. Citation. Filed Apr. 15, 1921. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [70]

[Endorsed]: No. 3687. United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, Appellant, vs. R. J. Nelson, M. Burns, Jas. Allen, R. W. Kelly, C. Vanderley, G. Swanson, C. B. Petterson, K. H. Niemi, Peter Emmers, S. Johannsen, Andries van Roon, Lenhart Saarnia, L. R. Drake, F. Jorgensen, A. A. Krutmeyer, John R. Whalen, V. J. Risardo, C. J. Sullivan, J. E. Gough, A. H. Lake, P. S. Murray, E. J. Farrell, R. Schulz, S. H. Hinrichi, D. L. Heywood, James Moore and Patrick O'Mara, Appellees. Apostles on Appeal. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Filed May 13, 1921.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

Libelants' Exhibit No. 1.

S. S. OMAHA.

March 23rd, 1920.

Joined the Green Star Steamship Corp. and was appointed Master of the S. S. City of Omaha.

March 24th, 1920.

1:00 A. M. left New York on the B. & O. train for Baltimore. Noon, went on board the S. S. City of Omaha and relieved Capt. Mathews.

Thursday, March 25th, 1920.

Maryland day at Baltimore. No cargo being loaded.

Friday, March 26th.

7:00 A. M. Resumed work loading cargo at all hatches.

2:00 P. M. Started signing on crew. Paid port wages.

6:00 P. M. Stopped work loading.

Saturday, March 27th.

7:00 A. M. Resumed work loading cargo at all hatches. Noon, stopped work for the day.

Sunday, March 28th.

No work going on.

Monday, March 29th.

Resumed work loading cargo at all hatches at 7:00 A. M.

6:00 P. M. Stopped work.

Tuesday, March 30th.

7:00 A. M. Resumed work loading cargo at 1, 2, 4 and 5 hatches.

6:00 P. M. Stopped work.

Wednesday, March 31st.

7:30 A. M. Resumed work loading cargo at 1, 2, 4 and 5 hatches.

6:00 P. M. Stopped for supper.

7:00 P. M. Resumed work at No. 2 hatch.

11:00 P. M. Stopped work.

Thursday, April 1st.

7:30 A. M. Resumed work loading cargo at 1, 2, and 4 hatches.

No. 1 and 4 hatches closed at 3:00 P. M.

11:00 P. M. Finished loading all cargo. Closed hatches.

Friday, April 2nd.

8:00 A. M. Thick fog, unable to leave the dock.

Draft of ship sailing 26-00. For 27-8 off from dock and proceeded on voyage weather still a little foggy.

4:00 P. M. Started adjusting compass.

5:00 P. M. Finished adjusting.

Saturday, April 3rd.

2:37 A. M. Reversed engines from full speed ahead to full speed astern for trial, ships way stopped in 3'-15".

3:45 A. M. Slowed down. 3:50 A. M. Stopped

4:00 A. M. Took Norfolk pilot on board and proceeded to Old Point Comfort to land trial board.

5:40 A. M. Anchored in Hampton Roads and landed trial board. Remained at anchor to make engine repairs.

9:50 A. M. Engine repairs completed.

10:00 A. M. Hove up anchor and proceeded from Hampton Roads to sea.

11:40 A. M. Stopped and discharged pilot and proceeded on voyage. Noon, passing Cape Henry.

11:20 P. M. Diamond Shoal Lightship abeam distance 8 miles.

Saturday, April 10th.

9:10 P. M. Stopped off Colon and took pilot on board, also Doctor and canal officials.

10:20 P. M. Made fast alongside pier 16 at Colon to take on board fuel oil.

Draught 25'-3' for 26-0 Aft.

Midnight started taking in fuel oil.

Capt. A. C. NORRIS—C/o STRUTHERS & DIXON, 343 Sansome St., San Francisco.

EXCERPTS FROM LOG-BOOK OF S. S. OMAHA.

Sunday, April 11th.

9:35 A. M. Finished taking fuel oil, received on board approximately 450 tons.

10:00 A. M. Cast off from dock and proceeded towards Blaboa.

11:25 A. M. Entering Gatun Lock.

12:23 P. M. Clearing Gatun Lock.

1:35 P. M. Experienced difficulty with electric telemotor control. Let go anchor to keep ship in channel.

2:40 P. M. Steering gear working properly, hove up anchor and proceeded.

4:00 P. M. The electric telemotor control to steering gear failed to operate, ship being at the entrance to Bomboa.

Reach 500 ft. north of beacon #28. The engines were immediately put full speed astern and the port

anchor let go but this failed to stop ships headway sufficiently, and she struck bank head on doing injury to the shell in wake of forepeak, the peak was immediately sounded and ship was found to be making water in that compartment very fast.

4:45 P. M. Steering gear working properly proceeded toward Balboa assisted by a tow-boat.

6:44 P. M. Entering Pedro Miguel Locks.

7:10 P. M. Clearing Pedro Miguel Locks.

7:48 P. M. Entering Miaflores Locks.

8:32 P. M. Leaving Miaflores Locks.

9:30 P. M. Arrived at dock at Balboa and made fast alongside S. S. Mulpua.

10:10 P. M. All fast, pilot left ship.

Engaged a shore watchman. Draught on arrival 29.07 for 25.11 aft.

S. S. CITY OF OMAHA AT BALBOA CANAL ZONE.

Monday, April 12th.

7:30 A. M. Reported accident to shipping board agents, and asked for a survey to be held. Employed diver to examine damage. Lloyds Surveyors came on board and made an examination of ship and took divers report.

2:00 P. M. Noted protest.

3:00 P. M. Received report from Lloyds surveyors to the effect that permanent repairs would have to be made. On asking them to modify this and allow a diver to go down and plug holes so peak could be pumped out and an examination made from the inside they agreed. At same time repairs on boilers and steering gear are being carried out.

Tuesday, April 13th.

7:00 A. M. Diver went down and plugged holes in bow.

Now began pumping out forepeak.

6:00 P. M. Water well out of peak.

Repairs on boilers and steering gear being carried out.

Wednesday, April 14th.

8:00 A. M. Lloyds surveyors came on board and made a survey of damage of bow, from inside of forepeak. Also peak was examined by Mast Master and 1st Officer. On their report being received it stated that ship could make temporary repairs and proceed to a United States Port for further examination.

Awaiting instructions from New York.

Thursday, April 15th.

7:00 A. M. Resumed work on boilers and steering gear.

Waiting on instructions from New York about temporary repairs.

Friday, April 16th.

7:00 A. M. Resumed work on boilers and steering gear.

Waiting on instructions from New York about temporary repairs.

Saturday, April 17th.

8:00 A. M. Resumed work on boilers and steering gear.

Shipping Board received instructions from New York to make temporary repairs to damaged part of ship.

5:30 P. M. Shifted ship alongside of dock ahead of S. S. Mulpua.

7:00 P. M. All fast.

Continued repairs until midnight.

Sunday, April 18th.

7:00 A. M. Resumed work on repairs to damaged bow also at work on boiler repairs. Continued repairs on bow damage until midnight.

Monday, April 19th.

7:00 A. M. Resumed work on repairs to damaged bow. Noon, completed repairs on damaged bow.

2:00 P. M. Lloyds Surveyor made an examination of repairs on damaged bow and recommended more cement to be put around damaged port. Repairs on boilers going on through the day.

Tuesday, April 20th.

8:00 A. M. Resumed work on damaged bow. Electricians overhauled electric telemotor.

1:00 P. M. Surveyor on board but work not completed.

8:00 A. M. Resumed work on damaged bow. Repairs on boilers going on through the day.

Wednesday, April 21st.

Boiler repairs resumed and electric telemotor being overhauled.

1:00 P. M. Lloyds Surveyor made examination of damaged bow and recommended a little more work to be done on damaged port. This work was started at once and completed at 10:15 P. M. Boiler work completed at noon.

Midnight, steering gear in working order.

Thursday, April 22nd.

9:00 A. M. Received instructions through agents from Green Star Line to proceed to San Francisco. Received all ships documents including Surveyor's reports.

11:15 A. M. Pilot on board.

11:30 A. M. Cast off from dock and proceeded to sea.

Draft 26-6 for 26-9 aft.

12:40 P. M. Pilot left ship. Proceeded on the way to San Francisco.

Friday, April 23rd.

Brick wall of port boiler collapsed. Boiler was cut out and after cooling was rebuilt.

Saturday, April 24th.

Center boiler gave out. Ship was stopped 8 hours to make repairs.

Tuesday, April 27th.

Center boiler gave out again. Noon, ship was headed for Salina Cruz.

Thursday, April 29th.

1:30 P. M. Arrived at Salina Cruz, and anchored in roads.

Friday, April 30th.

8:00 A. M. Got underway and started to enter inner harbour. Eccentric rod of steam steering gear broke. Came to anchor again and had same repaired.

Saturday, May 1st.

8:00 A. M. Got underway and came into inner harbor Salina Cruz without any accident.

9:00 A. M. Made fast to wharf. Draft. 25-6
for 26-00 Aft.

May 1st to May 17th.

Alongside of wharf making repairs to boilers.

May 17th.

10:50 A. M. Cast off from wharf and shifted ship
out of inner harbor, to Salina Cruz roads. Noon,
came to anchor in roads, waiting for ships papers.

6:00 P. M. Hove up anchor and proceeded on the
way to San Francisco.

Draft sailing. 25-6 for 26-08 Aft.

May 18th.

Ship stopped from 1:15 A. M. to 2:00 A. M. mak-
ing engine repairs.

May 20th.

5:55 P. M. Stopped ship to make engine and
boiler repairs.

May 21st.

Ship stopped making repairs to engines and
boilers.

May 22nd.

4:58 A. M. Proceeded ahead on engines.

May 23rd.

7:04 A. M. Stopped engines for boiler repairs.

11:05 P. M. Proceeded ahead on engines.

May 24th.

7:15 P. M. to 8:37 P. M. engines stopped for boiler
repairs.

May 25th.

6:17 A. M. Stopped engines for boiler repairs.

May 26th.

Engines stopped for repairs to boilers.

3:05 P. M. Proceeded ahead on engines.

8:50 P. M. Stopped engines for boiler repairs.

May 27th.

4:27 A. M. Proceeded ahead on engines.

9:13 A. M. Stopped for repairs to boilers.

9:52 A. M. Proceeded ahead on engines.

12:25 P. M. Stopped engines for boiler repairs.

May 28th.

2:49 A. M. Proceeded ahead on engines.

3:17 A. M. Stopped boiler trouble.

May 29th.

Noon, S. S. Cockaponset arrived at position where S. S. City of Omaha was located and took ship in tow. Position 21-14 N. 107-58 W.

All boilers out of commission, steering ship by hand gear aft.

May 30th.

Ship being towed by S. S. Cockaponset. All boilers out of commission ship being steered by hand gear aft.

May 31st.

Ship being towed by S. S. Cockaponset.

8:00 P. M. Got enough steam on one boiler to run dynamo and steer ship.

9:00 P. M. Slowed down to change gears from hand to steam and when going ahead again hawser parted at stern chock of S. S. Cockaponset.

Hove in cable and broken hawser and made fast again to S. S. Cockaponset, with other towing hawser.

P. M. Proceeded ahead with tow. Ship steering with steam gear controlled by electric telemotor.

June 1st.

Ship being towed by S. S. Cockaponset, everything going along nicely.

Steering ship by steam controlled by electric telemotor, making about $6\frac{1}{2}$ knots.

June 2nd.

6:00 A. M. Boiler gave out had to put ship in hand steering gear again.

Ship being towed by the S. S. Cockaponset. Making 6 knots.

June 3rd.

No steam on ship, steering by hand gear. Ship being towed by the S. S. Cockaponset. Making 6 knots.

June 4th.

Ship being towed by S. S. Cockaponset, making $6\frac{1}{2}$ knots.

No steam on ship, steering by hand gear aft.

June 5th.

3:15 A. M. Arrived in San Pedro Roads under tow of S. S. Cockaponset.

5:25 A. M. Came to anchor in San Pedro outer harbour.

8:30 A. M. Received visit from doctor. Waiting all day for instructions from agent as to the future movements of the steamer.

Draft on arrival of 25:00 for 25:40 aft.

Sunday, June 6th.

At anchor in San Pedro roads waiting for orders from San Francisco.

Monday, June 7th.

Still at anchor in San Pedro roads waiting for orders.

Tuesday, June 8th.

At anchor in San Pedro roads.

2:00 P. M. Local Inspectors, surveyors and Shipping Board officials came on board and made an examination of boilers etc., and decided ship would make repairs on one boiler and tow to San Francisco for permanent repairs.

Wednesday, June 9th.

11:30 A. M. Shore gang came on board and started repairs on boilers.

1:00 P. M. Tow boat came off and supplied ship with steam. Hove up anchor and started to enter the port of San Pedro. Tow boat and power boat could not handle ship. Had to call for help from navy, who came to our assistance.

5:00 P. M. Arrived at dock and made fast. Shore gang working through the night at repairs on boiler.

Thursday, June 10th.

Repairs of boilers going on through the day and night.

Friday, June 11th.

Ship at Kiskhoff Lumber wharf making repairs to boilers.

Saturday, June 12th.

Similar work going on through the day and night.

Sunday, June 13th.

11:00 A. M. Surveyors came on board to survey repairs done on boilers and decided to leave the boiler

with light fire through the day and part of the night and sail ship Monday morning.

Monday, June 14th.

7:00 A. M. Surveyors on board passed boiler and steering gear and ship left wharf assisted by tow boats and power boats. Proceeded out to roads to meet S. S. Devolente who was going to tow Omaha to San Francisco, after arriving in roads could not keep steam on boiler so came to anchor. Got in communication with shore and surveyors and shipping board men came on board to discover what was wrong. Got tow boat off to ship to supply steam and got a good head of steam up on boiler and blew the tubes and ship held her steam O. K.

9:20 P. M. Gave S. S. Devolante hawser.

10:30 P. M. Proceeded. 11:10 P. M. hawser carried away.

[Endorsed]: United States District Court. No. 16,871. Nelson vs. Omaha. Lib. Exhibit 1. Filed Nov. 5, 1920. Walter B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk.

No. 3687. United States Circuit Court of Appeals for the Ninth Circuit. Filed May 13, 1921. F. D. Monckton, Clerk.

Respondent's Exhibit "A."

[Copy of Telegram Received by Struthers & Dixon, Inc., San Francisco.]

CITY OF OMAHA 1439 MILES FROM SAN FRANCISCO NOON TODAY EXPERIENCING BOTH ENGINE AND BOILER TROUBLE

ENGINE TROUBLE REPAIRED TUBES IN STARBOARD AND PORT BOILER GIVING OUT WHEN NOT STOPPED MAKING ABOUT SIX KNOTS CONDITIONS MAY GET WORSE CONSIDER NO USE TRYING MAKE OTHER MEXICAN PORTS PLEASE ADVISE PROMPTLY WHAT YOU RECOMMEND IN CASE BOILERS FAIL ALTOGETHER.

Above wire sent to Green Star S. S. Corporation by Master of City of Omaha on May 23rd.

[Copy of Telegram Received by Struthers & Dixon, Inc., San Francisco.]

D 53 SF M 102 GOVT. WU

(Received SF 5-26-20)

RADIO VIA YB SF.

CITY OF OMAHA—May 25, 1920.

Struthers & Dixon, Inc.,

343 Sansome Street,

San Francisco, California.

CITY OF OHAMA.

CITY OF OMAHA NOON POSITION THIS DATE LATITUDE TWENTY FIFTY NORTH LONGITUDE ONE HUNDRED SEVEN FIFTY WEST THIRTEEN HUNDRED TEN MILES FROM FRISCO TUBES IN ALL BOILERS LETTING GO HAVE TO STOP AND PLUG SAME FREQUENTLY MAKING VERY POOR HEADWAY SITUATION SEEMS TO BE GETTING WORSE HAVE YOU ANY SUGGESTIONS TO MAKE PLEASE REPLY PROMPTLY FOLLOWING MESSAGE SENT TO USS THORTON AT EIGHT FIFTEEN PM SAME

DATE QUOTE WE ARE STOPPED NOW TRY-
ING TO PLUG TUBES IN BOILERS EXPECT
TO PROCEED AHEAD EARLY TOMORROW
THINK WE CAN REACH MAGDALENA BAY
NOTHING MORE TO ADD UNQUOTE.

NORRIS—Master.

[Copy of Telegram Sent by Struthers & Dixon,
Inc., San Francisco.]

WESTERN UNION WIRELESS

May 26, 1920.

Capt. Norris,

Steamer, City of Omaha" (At Sea),

1310 Miles from San Francisco.

SHIPPING BOARD HAS WIRELESS COCK-
APONSET AND DIABLO INTRUCTING
NEAREST PROCEED MAGALENA BAY TOW
YOU TO SAN FRANCISCO THEY WILL GET
IN WIRELESS COMMUNICATION WITH
YOU AND ARRANGE WHICH VESSEL
HANDLED IF NECESSARY CALL ON NAVY
FOR ASSISTANCE ADVISE US POSITION
PROGRESS DEVELOPMENTS DAILY.

STRUTHERS.

[Copy of Telegram Received by Struthers & Dixon,
Inc., San Francisco.]

B182Sf ZO 52 VIA NOG JCT WU

Received SF 5-27-20.

MAZATLAN SIN MEX—MAY 26, 1920

STRUTHERS & DIXON INC

343 SANSOME STREET

SAN FRANCISCO CALIFORNIA

CITY OF OMAHA

CITY OF OMAHA NOON POSITION THIS

DATE LAT 20 R 50 NORTH LONG R 107 R 50
WEST 1310 MILES FROM SAN FRANCISCO
TUBES IN ALL BOILERS LETTING GO HAVE
STOP AND PLUG SAME FREQUENTLY MAK-
ING VERY POOR HEADWAY SITUATION
SEEMS TO BE GETTING WORSE HAVE YOU
ANY SUGGESTIONS TO MAKE PLEASE RE-
PLY PROMPTLY

NORRIS, Master.

[Copy of Telegram Received by Struthers & Dixon,
Inc., San Francisco.]

(Received SF 5-27-20)

GS SM 48 RADIO VIA Postal
SANPEDRO-SS CITY OF OMAHA

Struthers & Dixon, Inc.

343 Sansome Street,

San Francisco, California.

CITY OF OMAHA

CITY OF OMAHA POSITION LATITUDE
2053 NORTH LONGITUDE 10732 WEST HAVE
STARTED AFTER STOPPING 33 HOURS TO
MAKE BOILER REPAIRS HAVE DECIDED
IF BOILERS GIVE OUT AGAIN TO TRY AND
MAKE MAGDALENA BAY AWAITING YOUR
ADVICE CABLED NEWYORK SITUATION
23rd. NO REPLY

NORRIS, Master.

[Copy of Telegram Sent by Struthers & Dixon,
Inc., San Francisco.]

San Francisco, May 27, 1920.

Captain Norris (via Western Union)

SS City of Omaha at Sea

1310 Miles from Southeast of San Francisco.

Wireless from Mazatlan, Sinaloa, Mexico.

Shipping Board has wirelessly COCKAPONSET and DIABLO instructing nearest proceed Magdalena Bay tow you to San Francisco they will get in wireless communication with you and arrange which vessel handles. If necessary call on Navy for assistance. Advice us position progress developments daily.

STRUTHERS & DIXON.

[Copy of Telegram Received by Struthers & Dixon,
Inc., San Francisco.]

CITY OF OMAHA—MAY 29 WU

(Received SF 7-29-20)

Struthers & Dixon, Inc.

343 Sansome Street,

San Francisco, Calif.

CITY OF OMAHA

POSITION SS OMAHA LAT 2127 NORTH
LONG 10815 WEST YOUR MESSAGE RECD
SHIP ABOUT DISABLED HAVE ASKED
NAVY SHIP REGARDING TOW TO MAGDA-
LENA BAY NO REPLY YET SO FAR UNABLE
LOCATE COCKAPONSET OR DIABLO

NORRIS, Master.

[Copy of Telegram Sent by Struthers & Dixon,
Inc., San Francisco.]

FAST MESSAGE

May 29, 1920.

Master,

City of Omaha,

1300 Miles south San Francisco

Wireless via Nazatian, Sinaloa, Mexico.

Navy Department has detailed Orion tow you
Magdalena Bay Continous efforts communicate
Cockaponset Diable Keep us advised progress

STRUTHERS & DIXON, Inc.

[Copy of Telegram Received by Struthers & Dixon,
Inc., San Francisco.]

YB WB 31 RADIO VIA Y B S F WU

CITY OF OMAHA—May 29, 1920.

(Received SF 7-29-20)

Struthers & Dixon, Inc.

343 Sansome Street,

San Francisco, Calif.

CITY OF OMAHA

COCKAPONSET TOOK OMAHA IN TOW 100
PM TODAY LAT 21, 14 N LONG 107.58 W MAK-
ING SIX KNOTS BOILERS ALL OUT COM-
MISSION STEERING SHIP HAND GEAR

NORRIS, Master.

257A May 30, L920

[Copy of Telegram Received by Struthers & Dixon,
Inc., San Francisco.]

A 77GS 33 RADIO VIA P J WU

(Received SF 7-29-20)

SANPEDRO CALIF

CITY OF OMAHA

Struthers & Dixon, Inc.

343 Sansome Street,

San Francisco, Calif.

CITY OF OMAHA

COCKAPONSET TOWING OMAHA MAGDA-
LENA BAY ABEAM 520-PM FINE WEATHER
MAKING ALMOST SEVEN KNOTS 9-PM
HAWSER PARTED 11-PM TOW MADE FAST
AGAIN HAVE STEAM AT PRESENT TO
STEER SHIP

NORRIS.

[Copy of Telegram Received by Struthers & Dixon,
Inc., San Francisco.]

94 ;GSOS 23 RADIO VIA P J *Postal*

(Received SF 6-2-20)

SANPEDRO—SS CITY OF OMAHA

May 30, 1920

Struthers & Dixon, Inc.

343 Sansome Street,

San Francisco, Calif.

CITY OF OMAHA

COCKAPONSET TOWING OMAHA CAPE
SAN LUIS ABEAM FIVE AVERAGING SIX
KNOTS FRESH NORTH WEST WINDS NO
STEAM ON SHIP.

NORRIS, Master.

[Copy of Telegram Received by Struthers & Dixon,
Inc., San Francisco.]

CITY OF OMAHA—June 1 *Postal*

(Received SF 6-2-20)

STRUTHERS & DIXON, Inc.

343 SANSOME STREET,

SAN FRANCISCO, CALIFORNIA.

CITY OF OMAHA

POSITION OF OMAHA NOON TUESDAY
LATITUDE 2550 NORTH LONGITUDE 11324
WEST AVERAGING SIX POINT FIVE
KNOTS STEAM ON SHIP FOR STEERING
COCKAPONSA CARGO FOR SAN PEDRO ARE
YOU ARRANGING FOR OMAHA TOWING DI-
RECT TO SAN FRAN

NORRIS, Master.

[Endorsed]: United States District Court. No.
16,871. Nelson vs. Omaha, Respts. Exhibit "A."
Filed Nov. 5, 1920. Walter B. Maling, Clerk. By
Lyle S. Morris, Deputy Clerk.

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peals for the Ninth Circuit. Filed May 13, 1921.
F. D. Monckton, Clerk.

